

December 31, 2002



Acquisition

Management Controls Over
Proposed Prime Vendor Support for
the Army Apache Helicopter
(D-2003-038)

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Office of the Inspector General

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Acronyms

AAA	Army Audit Agency
AMC	Army Materiel Command
AMCOM	Army Aviation and Missile Command
CEAC	Army Cost and Economic Analysis Center
IPT	Integrated Product Team
OIPT	Overarching Integrated Product Team
OMB	Office of Management and Budget
PEO	Army Program Executive Office, Aviation
PVS	Prime Vendor Support
PWS	Performance Work Statement
WIPT	Working Integrated Product Team



INSPECTOR GENERAL
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December 31, 2002

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE
(INSTALLATIONS AND ENVIRONMENT)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Report on Management Controls Over Proposed Prime Vendor Support for
the Army Apache Helicopter (Report No. D-2003-038)

We are providing this report for review and comment. We performed the evaluation in response to an allegation to the Defense Hotline. We considered management comments on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. Report Recommendations A.1., A.2., B.1., and B.2. were revised as requested in the management comments. We request that the Deputy Under Secretary of Defense (Installations and Environment) provide additional comments on Recommendations A.1. and B.1. and that the Army Assistant Chief of Staff for Installation Management provide additional comments on Recommendations A.2. and B.2. by March 3, 2003.

If possible, please send management comments in electronic format (Adobe Acrobat only) to Audls@dodig.osd.mil. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the classified SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the evaluation staff. Questions should be directed to Mr. Shelton R. Young at (703) 604-8866 (DSN 664-8866) or Mr. Dennis E. Payne at (703) 604-8907 (DSN 664-8907). See Appendix L for the report distribution. The team members are listed inside the back cover.

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Office of the Inspector General of the Department of Defense

Report No. D-2003-038

(Project No. D2000LH-0252)

December 31, 2002

Management Controls Over Proposed Prime Vendor Support for the Army Apache Helicopter

Executive Summary

Who Should Read This Report and Why? This report should be read by officials responsible for conducting studies of potential contracting-out efforts. The report discusses the need to ensure that Government and contractor competition-sensitive data are safeguarded. This includes ensuring that there is no appearance of a lack of fairness or impartiality in the evaluation of Government and contractor proposals.*

Background. In April 1997, the Army received an unsolicited contractor proposal to provide Prime Vendor Support (PVS) for the Apache helicopter. In October 1997, the Army made a preliminary determination that the contracting-out review requirements of Office of Management and Budget (OMB) Circular No. A-76 were not applicable and began pursuing a waiver from OMB Circular No. A-76 requirements. Although the Army pursued the waiver request for more than 3 years until a decision was made on November 28, 2000, not to further pursue the PVS initiative, the waiver was never approved. The evaluation was performed in response to a Defense Hotline allegation that the evaluation of the OMB Circular No. A-76 waiver request was flawed. After performing a review of the allegation, the Inspector General of the Department of Defense, Office of Departmental Inquiries concluded in a memorandum issued June 29, 2000, that there were no apparent violations of law or regulation by the two senior officials identified in the allegation. Subsequently, we examined the management controls relevant to the allegation. On December 16, 2002, additional information provided by the Defense Hotline complainant of potential conflicts of interests and bias by senior officials was provided to the Office of Departmental Inquiries for their review.

The General Accounting Office also evaluated the Army's initial PVS review efforts and issued a report in July 1999 on the results of their review. The General Accounting Office concluded that "As would be expected when a new concept of this magnitude is introduced, there are significantly different views about various aspects of the proposal. . . . Estimates of the cost differences between PVS and the Government's best-case cost study of the in-house approach vary significantly, and each is considered the most cost-effective depending on which assumptions, including program requirements, are used."

Results. The Circular A-76 waiver process used for the PVS evaluation needed clarification because of lack of specific guidance that addresses actual and apparent conflicts of interest, separation of duties, use of a common requirements baseline, basis

* The use of the term "Government proposal" should not be interpreted as a proposal submitted in accordance with a solicitation as required by the Federal Acquisition Regulation.

for determining whether costs are realistic and fair, and requirement for an independent review of the cost comparison.

The Aviation and Missile Command and the Program Executive Office took actions to safeguard Government and contractor-sensitive data. While we did not note any actual instances of disclosure or transfusion of sensitive data, we identified instances where multiple responsibilities assigned to three DoD employees created an opportunity for inadvertent disclosure or transfusion of contractor proprietary data (Finding A).

The Government and contractor proposals were not based on a common requirements baseline and an independent review of the costs was not performed (Finding B).

See the Findings section for the detailed recommendations.

Management Comments and Evaluation Response. The Director, Competitive Sourcing and Privatization, Office of the Deputy Under Secretary of Defense for Installations and Environment generally concurred with the report and suggested revisions to the draft report and recommendations citing a need to work with OMB on clarification of the OMB waiver policy. The Deputy for Systems Management, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) requested minor changes to several recommendations, but overall concurred with modifying the Army A-76 implementing regulation guidance. The Deputy also recommended that the recommendations to the Army be directed to the Army Assistant Chief of Staff for Installation Management, the proponent for the Army A-76 implementing regulation guidance. Based on Management Comments, we revised the recommendations and the addressee of the recommendations. We also received comments from both the Defense Hotline complainant and the Army Aviation and Missile Command. In response to the comments, we added clarifications to the report. See the Findings section of the report for a discussion of management comments and the Management Comments section of the report for the complete text of the comments as well as in Appendix J and Appendix K. We request that the Deputy Under Secretary of Defense for Installations and Environment and the Army Assistant Chief of Staff for Installation Management provide additional comments on the revised recommendations by March 3, 2003.

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Background

This evaluation was performed in response to a Defense Hotline allegation. The Defense Hotline allegation indicated that evaluation of an Office of Management and Budget (OMB) Circular No. A-76 (Circular A-76) waiver for the Apache helicopter Prime Vendor¹ Support program (PVS program) by the Army was flawed (see Appendix C for a glossary of terms). The Inspector General of the Department of Defense, Office of Departmental Inquiries initially reviewed the allegation for possible investigation of senior official misconduct. After performing a review of the allegation, in a memorandum issued on June 29, 2000, the Office of Departmental Inquiries concluded that there were no apparent violations of law or regulation by the two senior officials identified in the allegation. Subsequently, we examined the management controls relevant to the allegation. On December 16, 2002, additional information provided by the Defense Hotline complainant of potential conflicts of interests and bias by senior officials was provided to the Office of Departmental Inquiries for their review.

The Apache Helicopter. The Apache helicopter, introduced in 1983, is the Army's premier aviation weapon system. The Apache helicopter mission as an attack helicopter is to perform rear, close, and deep operations and to provide armed reconnaissance and security. In February 1999, the Under Secretary of Defense for Acquisition and Technology (now Under Secretary of Defense for Acquisition, Technology, and Logistics) selected the Apache helicopter as one of 10 pilot acquisition programs for reporting to Congress as required by Section 816(a) of the National Defense Authorization Act for FY 1999 (see Appendix D for details on the reporting requirement and DoD logistics reengineering efforts).

Submission of an Unsolicited Proposal for Apache Helicopter PVS Program. In April 1997 (see Appendix E for a chronology of significant events), the Commanding General, Army Aviation and Troop Command (now Army Aviation and Missile Command [AMCOM])² received an unsolicited proposal from Team Apache Systems³ to provide a PVS program for the Apache helicopter. The intent of the PVS program was to provide streamlined and complete system management and logistics support for the Apache helicopter.

Team Apache Systems' Proposal for the PVS Program. The primary deliverable in the Team Apache Systems' proposal (contractor proposal) for the PVS program was a specified number of flying hours per year and related

¹ Prime vendors typically are third-party contractors that buy inventory from a variety of suppliers, store the inventory in a commercial warehouse, and ship the inventory to customers when ordered. In the case of the Apache helicopter, the prime vendor concept was much different. The major equipment manufacturers for the Apache helicopter teamed together to propose a full range of logistics support, along with continuous product improvement and modernization as the PVS program.

² The acronym AMCOM is used throughout the report for ease of reference.

³ The team initially formed by McDonnell Douglas Helicopter Systems, Lockheed Martin Electronics and Missiles, General Electric Engine Services, with Corpus Christi Army Depot, Texas, as a proposed partner. General Electric Engine Services subsequently became a subcontractor for engines.

logistics support. The contractor proposal would transfer logistics support functions Government personnel performed to Team Apache Systems. Without additional data, however, the Army deemed the unsolicited proposal unacceptable. In total, the contractor submitted three proposals. The first was the unsolicited proposal (April 1997); the second was a more comprehensive proposal for negotiating a price (April 1998); and the third was the final, negotiated priced proposal (June 1998).

Army Evaluation of the PVS Program. On May 1, 1997, the Commanding General, AMCOM learned that a decision to evaluate the PVS program was planned and that the evaluation would be led by a Headquarters, Department of the Army integrated product team (IPT). Also on May 1, 1997, the Commanding General, AMCOM requested that the Commanding General, Army Materiel Command (AMC) intervene to refocus the responsibility for a detailed analysis of the PVS program to AMC.

Headquarters, Department of the Army-led IPT. In a memorandum signed May 7, 1997, the Assistant Vice Chief of Staff of the Army, the Deputy Commanding General, AMC, and the Military Deputy to the Assistant Secretary of the Army (Research, Development, and Acquisition) directed establishment of a Headquarters, Department of the Army IPT that would be chaired by an Army General Officer. The IPT was directed to assess the contractor proposal for the PVS program.

At the same time, a General Officer Steering Committee⁴ was established to oversee the activity of the IPT. Guidance to the IPT required that any recommendations resulting from the process must at a minimum either maintain or improve the then-current Apache readiness. The IPT was also required to produce a specified level of savings with no additional investment of funds beyond the funding amount in the then-current Budget Estimate Submission and Program Objective Memorandum. The fiscal years for the Budget Estimate Submission and Program Objective Memorandum were defined as FY 1999 through FY 2003, and for purposes of the evaluation, the fiscal years were to coincide with the maximum expected length of the contractor-based alternative of 5 years starting in FY 1999. The Headquarters, Department of the Army-led IPT ceased to function on May 23, 1997, and the Army Program Executive Office, Aviation (PEO) was designated as the lead agency for implementation of the PVS program.

Army Program Executive Office, Aviation. In May 1997, the PEO was designated⁵ as the lead agency with support from and direct tasking authority within the AMC. The PEO reported to the Army Acquisition Executive, who also held the position of the Assistant Secretary of the Army (Research, Development, and Acquisition) [now the Assistant Secretary of the Army (Acquisition, Logistics, and Technology)]. The tasking to the PEO included,

⁴ The General Officer Steering Committee was to include, at a minimum, 12 Lieutenant Generals and Major Generals, and 5 high ranking civilians.

⁵ The designation was made by the Deputy Commanding General, AMC; the Director, Program Analysis and Evaluation; and the Acting Military Deputy to the Assistant Secretary of the Army for Research, Development, and Acquisition.

but was not limited to, establishing target dates for preparing a Justification and Approval for Other Than Full and Open Competition, conducting Alpha contract negotiations, resolving Circular A-76 threshold issues, and completing a study of the cost of Government performance compared to the cost of contractor performance. The PEO was collocated with AMCOM at the Redstone Arsenal, Huntsville, Alabama, and delegated management of the PVS program to the Apache helicopter Project Manager.

Apache Helicopter Project Manager. The Apache helicopter Project Manager, collocated with the PEO, further delegated management of the PVS program to the Apache helicopter Deputy Project Manager, who was designated chairman of the overarching integrated product team (OIPT). The chairman of the OIPT established four IPTs and four subordinate working IPTs (WIPTs). The tasks of those IPTs and WIPTs were to include developing the PVS baseline,⁶ the Alpha negotiation of a performance work statement (PWS), and a contract with Team Apache Systems; obtaining the Government proposal⁷ from AMCOM for inclusion in the Circular A-76 waiver package; performing a technical evaluation of competing proposals; and preparing a Circular A-76 waiver. See Appendix F and for the Army organizational structure, and Appendix G for Army participants and roles in the PVS program management process.

AMC and AMCOM Role in the Apache PVS Program. The May 1997 memorandum that designated the PEO as the lead agency for implementation of the PVS program tasked AMC to support the Apache program manager in conducting the Alpha contracting. However, the details for such support were not provided in that memorandum. We were advised by an involved employee that as the effort to implement the PVS program continued, the role of AMC and AMCOM evolved. AMC and AMCOM employees became members of the Cost WIPT that developed the PVS baseline and compared the Government and the contractor proposals. AMC also provided guidance to AMCOM regarding development of the Government proposal as well as comments on the PWS for the PVS.

AMCOM was an active participant in several other aspects of the PVS program. For example, AMCOM personnel who participated in preparing the Government proposal were members of the Technical Evaluation WIPT that evaluated the technical aspects of the Government proposal. AMCOM personnel were also members in the Logistics WIPT that prepared the PWS. AMCOM personnel also participated in the review of the Government proposal with the Army Cost and Economic Analysis Center (CEAC).

CEAC Role in the Apache PVS Program. CEAC is a Field Operating Agency of the Office of the Assistant Secretary of the Army (Financial Management and Comptroller), and its Director is also the Deputy for Cost Analysis within the Office of the Assistant Secretary of the Army (Financial Management and Comptroller). We were advised by two of the involved

⁶ For a description of PVS baseline, see “The Government Proposal” in the Background section.

⁷ The use of the term Government proposal should not be interpreted as a proposal submitted in accordance with a solicitation as required by the Federal Acquisition Regulation.

employees that CEAC participated in compiling and validating data for the PVS baseline; performed the review of the Government proposal with assistance from AMCOM; compared the Government proposal with the contractor proposal; and as a member in the Cost WIPT, prepared required equalizing adjustments.⁸ CEAC also assisted the Army Audit Agency (AAA) in the review of the Circular A-76 waiver package. CEAC participation in the PVS program evolved from the participation of the Office of the Assistant Secretary of the Army (Financial Management and Comptroller) in the General Officers Steering Committee.

The General Officer Steering Committee designated the Office of the Assistant Secretary of the Army (Financial Management and Comptroller) as the lead agency for completing an evaluation of the cost of Government performance compared to the cost of contractor performance. The General Officer Steering Committee was also responsible for determining the PVS program financial impacts and recommending solutions. The CEAC mission and functions include managing development and maintenance of the Operating and Support Management Information System materiel cost database, which was used in developing the PVS baseline costs.

The sources of the Operating and Support Management Information System data are the Army standard management information system databases that capture actual spare parts consumption by Army units. The Army uses the Operating and Support Management Information System data to build its Operating and Support budgets. The data are used to compute weapon system cost factors such as cost per flying hour for each weapon system in the Army. Cost factors are input to the Army Training Resource Model, which directly computes Army Operating Support budget requirements.

The Army Audit Agency. AAA involvement in the cost analysis of the PVS program began in August 1998. AAA participation was in response to taskings from the Under Secretary of the Army, Assistant Secretary of the Army (Acquisition, Logistics, and Technology), and the Assistant Secretary of the Army (Financial Management and Comptroller). AAA issued five consulting reports and provided multiple briefings to the Under Secretary of the Army on the results of those reviews of the PVS program. AAA reviewed the waiver package. Other taskings to AAA included a review of the impact on the Army Working Capital Fund, and PVS program cash flow. Further, AAA requested that the Technical Evaluation WIPT conduct a second review of the life-cycle cost reduction efficiencies that were claimed in the Government proposal. AAA began reviewing the PWS in February 2000. An AAA representative advised us that the review was discontinued after the PVS program was suspended in April 2000 as a result of a legal opinion by the office of the Army's General Counsel regarding the financial treatment of the Apache helicopter parts inventory. The AAA was not tasked to perform the independent review

⁸ In this report, we use the term "equalizing" adjustments to refer to "normalizing" adjustments. Normalizing adjustments are adjustments to the Government and contractor proposals that are meant to bring the Government and the contractor proposals to a common scope of work and performance standards.

functions described in the Circular A-76 Revised Supplement Handbook. See Appendix I for additional information on AAA participation.

Team Apache Systems Proposals. In October 1997, both a Justification and Approval for Other Than Full and Open Competition and an announcement in the Commerce Business Daily for the PVS program included a summary of requirements. The Procurement Contracting Officer advised us that Team Apache Systems submitted a second proposal in April 1998 that was consistent with the summary requirements in the Justification and Approval for Other Than Full and Open Competition. Between April 1998 and June 1998, the requirements were refined and agreed upon, along with contractor-proposed price, at the conclusion of the Alpha negotiations. In June 1998, Team Apache Systems submitted its third proposal, which included the price agreed upon during the Alpha negotiations. The proposal was for a fixed-price incentive contract with 1 basic and 4 optional years. That submission became the contractor proposal.

The Government Proposal. The Budget Estimate Submission and Program Objective Memorandum, defined as FY 1999 through FY 2003 for the evaluation, was established in March 1998 as the PVS program cost baseline. The primary source for the PVS baseline that CEAC compiled was the Operating and Support Management Information System CEAC managed. CEAC was also responsible for reviewing the reasonableness and reliability of the PVS baseline. The PVS baseline comprised three appropriations: Operations and Maintenance, Army; Operations and Maintenance, Army National Guard; and Operations and Maintenance, Army Reserves. The total PVS baseline was \$1.832 billion. The funds were designated to be used for Apache helicopter unit operations, end-item supply and maintenance, and direct and indirect support. The PVS baseline excluded items such as ammunition, crash damage, petroleum, and other related functions.

The head of the Business WIPT informed us that it was decided that the Government should be able to offer improvements to the PVS baseline. AMCOM was responsible for preparing the Government proposal. A combined team that included analysts from AMC and AMCOM was formed in early November 1997 to develop the Government proposal. The proposed improvements were initiatives in the Program Objective Memorandum documents used to determine the PVS baseline. Examples of those initiatives were Modernization Through Spares (buying new, improved parts) and Life-Cycle Cost Reductions (projects that could reduce maintenance and repair costs of the Apache helicopter fleet). The resulting document, prepared by AMCOM, became the Best Case Government Cost estimate (the Government proposal).

In March 1998, the Commander, AMCOM informed the PEO that AMCOM had completed the Government proposal and that the Government proposal would be in the custody of AMCOM chief legal counsel and delivered with the contractor proposal to the PEO. In March 1998, the Procurement Contracting Officer and staff from the Business IPT were compiling a Circular A-76 waiver request for PEO signature. The waiver process required an evaluation of Government and contractor costs. In June 1998, the Government proposal was delivered to the Cost WIPT for inclusion in the evaluation of Government and

contractor costs. The PEO informed us that in October 1998 he used that information to prepare the waiver. One of the functions of the Cost WIPT was to compare and equalize the Government and the contractor proposals.

Congressional Notification and Sole Source Approval. In October 1997, Army notified Congress, in compliance with section 2461, title 10, United States Code of its intent to begin analyzing the PVS program for possible change to performance by the private sector. Further, in October 1997, the Acting Assistant Secretary of the Army (Research, Development, and Acquisition) [now Assistant Secretary of the Army (Acquisition, Logistics, and Technology)] signed the Justification and Approval for Other Than Full and Open Competition that designated Team Apache Systems the sole source for the acquisition. The Justification and Approval for Other Than Full and Open Competition states that “a preliminary determination has been made that the requirements of OMB Circular A-76 are not applicable because the effort represents a substantial business processes re-engineering of the logistics support function and its management.” The document also states, “Once the data necessary to make a cost comparison has been agreed upon by the Government and the contractor, a final determination will be made by the Department of the Army as to the applicability of Circular A-76. The contractor will be informed of the Government’s intent to make this comparison as part of the negotiation process.”

Circular A-76 Waiver. In October 1998, the PEO prepared and submitted a request to the Assistant Secretary of the Army (Installations, Logistics, and Environment) [now Assistant Secretary of the Army (Installations and Environment)] for a Circular A-76 waiver. The waiver included an evaluation of Government and contractor costs to satisfy the Circular A-76 requirement that the waiver be accompanied by a detailed determination that the conversion had met one of the two prescribed conditions for waiver submission. The PEO request for Circular A-76 waiver states that, “A waiver to the formal cost comparison requirements of [Circular] A-76 is requested for Apache PVS because the Best Case Government organization or another contractor would have no reasonable expectation of winning a competition conducted under the cost comparison procedures of the Revised Supplemental Handbook. Additionally, the conversion will result in significant financial and service quality improvements and is not expected to significantly reduce the level or quality of competition in the future award or performance of work.”

PVS Program, Round II. The AMCOM Procurement Contracting Officer informed Team Apache Systems in an October 4, 1999, letter that the agreement reached during the Alpha negotiations could not be executed because “the Office of the Secretary of Defense would not permit the decapitalization⁹ of the Army Working Capital Fund.” Briefing charts obtained from AMCOM and the PEO disclose that suspension of the program was effective September 2, 1999. In November 1999, the Under Secretary of the Army tasked AMCOM to review the inventory issue and update the Government proposal. The undertaking was referred to as the PVS program, Round II (PVS Round II). AMCOM

⁹ Decapitalization is the transfer of fund inventories to other appropriations or funds without reimbursement.

developed two alternatives. One alternative was to have the contractor replace in kind parts that the contractor withdrew. The other alternative was to have the contractor pay the Army Working Capital Fund for the parts that the contractor withdrew.

In March 2000, the Army Office of the General Counsel stated that both of the alternatives AMCOM developed had serious deficiencies and recommended pursuing a legislative relief that would allow issuing the inventory to the contractor without reimbursement. In April 2000, the Commanding General, AMCOM through the Commanding General, AMC informed the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) that AMCOM was “doubtful that the PVS initiative can proceed,” and that “we have determined to postpone the use of further resources in the pursuit of PVS.”

Status of the PVS Program. The Army position was provided in an Under Secretary of the Army memorandum to the Under Secretary of Defense for Acquisition, Technology, and Logistics dated November 28, 2000. The Under Secretary of the Army stated that the Army would not pursue the PVS initiative and that, in the short term, the contractor proposal did not appear to present a cost advantage over the Army’s plan. Reasons stated in the Army memorandum for not accepting the contractor proposal were that the 3-year-old cost data presented lacked currency and the Army legal counsel belief that the Army may need to undertake a Circular A-76 review.

General Accounting Office Evaluation of Army PVS Review Effort. The General Accounting Office evaluated the Army’s initial PVS review effort. The results of that evaluation are presented in the July 1, 1999, General Accounting Office Report No. NSIAD 99-140, “Army Logistics Status of Proposed Support Plan for the Apache Helicopter.” The General Accounting Office in commenting on the PVS process reported that, “As would be expected when a new concept of this magnitude is introduced, there are significantly different views about various aspects of the proposal. . . . Estimates of the cost differences between PVS and the Government’s best-case cost study of the in-house approach vary significantly, and each is considered the most cost-effective depending on which assumptions, including program requirements, are used.”

Objectives

Our overall evaluation objective was to evaluate the adequacy of management controls to preclude potential conflicts of interest and ensure the integrity and inclusiveness of data used for management decisions. See Appendix A for a discussion of the evaluation scope and methodology. See Appendix B for prior coverage related to the evaluation objective.

A. Guidance on Management Controls for Separation of Duties in the Circular A-76 Waiver Process

AMCOM and the PEO took actions to safeguard Government and contractor competition-sensitive data. However, during the PVS process and the processing of a potential waiver to the Circular A-76 process, there was a lack of regulatory guidance and management controls that would ensure separation of duties when multiple responsibilities were assigned to DoD employees. While we did not note any actual instances of disclosure or transfusion of contractor proprietary data to employees involved in preparing the Government proposal or incorporation of such data in the Government proposal, we identified instances when such opportunities, and inadvertent disclosure of contractor proprietary information, could have occurred as a result of the multiple responsibilities assigned to three DoD employees. The condition occurred because the cited employee assignments were inconsistent with Part 3 of the Federal Acquisition Regulation and DoD guidance on management controls, which includes separation of duties. Further, limited regulatory guidance existed that addressed rules regarding conflicts of interest for Circular A-76 waiver evaluations of Government and contractor costs. As a result, an appearance of lack of fairness or impartiality in the evaluation of the Government and contractor proposals may have been created.

Criteria

Federal Acquisition Regulation. Federal Acquisition Regulation subpart 3.101-1, “Standards of Conduct,” states, “Government business shall be conducted in a manner above reproach and . . . with complete impartiality and with preferential treatment for none,” also, “Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.”

DoD Instruction 5010.40. DoD Instruction 5010.40, “Management Control Program Procedures,” August 28, 1996, includes by reference OMB Circular No. A-123 (Revised), “Management Accountability and Control,” June 21, 1995. OMB Circular No. A-123 requires that agency managers shall incorporate basic management controls in the strategies, plans, guidance, and procedures that govern their programs and operations. OMB Circular No. A-123 also states that controls shall be consistent with the standards drawn primarily from the “Standards for Internal Control in the Federal Government,” issued by the General Accounting Office. The standards include compliance

with laws and regulations, separation of duties, and supporting documentation. See Appendix H for a compendium of laws, regulations, and instructions used in this evaluation.

AMCOM and PEO Actions

AMCOM and the PEO took actions to safeguard Government and contractor competition-sensitive data. Those actions consisted of establishing an organizational structure for the working groups, ensuring availability of legal guidance, and executing nondisclosure statements.

Working Groups Structure. The Apache helicopter Deputy Project Manager established an organizational structure for managing the PVS program. The established structure consisted of an OIPT, four IPTs, and four subordinate WIPTs (see Appendixes F and G), each in charge of a separate functional area consistent with Army Regulation 70-1, "Army Acquisition Policy," December 1997. In the first PVS program OIPT meeting that convened on June 10, 1997, the OIPT process was reviewed, WIPTs were established, and 33 issues were assigned to the WIPTs. Including the Army Office of the General Counsel, 42 persons representing several levels of Army commands attended the June 10, 1997, meeting.

Legal Guidance on Data Firewalls. Early in the PVS program competitive process, AMCOM legal counsel advised AMCOM and PEO personnel about the need to safeguard contractor pricing data and maintain firewalls between individuals who had access to the contractor proposal and the Government proposal. During the OIPT meetings, the Deputy Project Manager for the Apache program also expressed the need for signed nondisclosure statements.

Nondisclosure Statements. The PEO, AMCOM legal counsel, and Procurement Contracting Officer provided us with 201 nondisclosure statements signed by personnel (180 for Army personnel, 5 for personnel in other Defense organizations, 5 for personnel in non-Government organizations, and 11 for personnel in organizations that could not be identified) involved with the contractor proposal and the Government proposal. We did not determine whether other organizations retained nondisclosure statements. All of the seven employees who were alleged to have conflicts of interest because of their performance of multiple functions during the evaluations of the PVS program signed nondisclosure statements. Of the seven employees, four performed some functions that should have been performed by another individual. Those actions resulted in either actual or potential conflicts of interest for three employees, a question on independence for another employee, and created an appearance of a lack of fairness or impartiality in the evaluation of proposals. The employees were Employee A, Employee B, and Employee C [AMCOM], and Employee D¹⁰ [CEAC].

¹⁰ Employee D actions are discussed in finding B.

Regulatory Guidance and Management Controls

During the PVS process and the processing of a potential waiver to the Circular A-76 process, there was a lack of regulatory guidance and management controls that would ensure separation of duties when multiple responsibilities were assigned to DoD employees. Specifically, DoD guidance on conflicts of interest and separation of duties in processing Circular A-76 waivers was lacking. During the PVS process, some individuals performed multiple functions. Additionally, the roles and responsibilities of several individuals changed as they were assigned between IPTs and WIPTs that examined the contractor and the Government proposals. However, on April 3, 2000, the Under Secretary of Defense for Acquisition and Technology (now the Under Secretary of Defense for Acquisition, Technology, and Logistics) issued interim guidance, "Department of Defense Strategic and Competitive Sourcing Programs Interim Guidance," which includes criteria for the Circular A-76 waiver process. However, specific regulatory guidance regarding the organizational structure and avoidance of conflicts of interest for managing the waiver process was lacking. Because of the significance of waivers, we believe that the inclusion of such guidance would mitigate or minimize the problems raised in this evaluation, such as conflicts of interest and lack of separation of duties.

Opportunities for Inadvertent Disclosure of Contractor Proprietary Data

While we did not note any actual instances of disclosure or transfusion of contractor proprietary data to employees involved in preparing the Government proposal or incorporation of such data in the Government proposal, we identified instances when such opportunities, and inadvertent disclosure of contractor proprietary information, could have occurred as a result of the multiple responsibilities assigned to three DoD employees.

Employee A. Employee A was a senior member of the AMCOM Command Group who reported directly to the Commanding General, AMCOM. The directorate for which Employee A was responsible was identified by an AMCOM official as an organization that would be impacted by the results of the PVS program. Based on information an official from the PEO office provided, a CEAC employee, and Employee A, Employee A was assigned the following tasks during the PVS evaluation: co-study director and evaluator in the Cost WIPT (November 1997 through September 1998); assisting CEAC in reviewing the Government proposal (March 1998 through June 1998); and team member in the Technical Evaluation WIPT that performed a second review of the Life-Cycle Cost Reduction savings in the Government proposal (July 1999). Employee A and an AMCOM manager advised that Employee A was also an advisor to the Commanding General, AMCOM on issues related to the Government proposal, such as reasonableness of the estimate and sufficiency of the supporting documents for audit.

Cost WIPT. The Chief of the Business WIPT reported that the Cost WIPT prepared the Government PVS baseline that was provided to AMCOM for preparing its proposal. The Cost WIPT was also responsible for comparing the Government and the contractor proposals and proposing equalizing adjustments. In June 1998, the Cost WIPT received the Government proposal, which continued to be updated through July 1998. In July 1998, the Business IPT received the contractor proposal. The Cost WIPT compared the two proposals, proposed equalizing adjustments, and concluded in September 1998 that the Government proposal would cost less than the contractor proposal. The results were intended to be used to support the Circular A-76 waiver request. The PEO disagreed with the results. The Procurement Contracting Officer and a CEAC employee reported that the Procurement Contracting Officer and a member of the Business IPT subsequently developed different equalizing adjustments, which were included in the Circular A-76 waiver request the PEO signed. During the assignment to the Cost WIPT, Employee A prepared a comparative study plan intended for use in evaluating the contractor and Government proposals. Later, Employee A reported that Employee E, who was subordinate to him, attended the Cost WIPT meetings in the absence of Employee A.

Reviewing Government Proposal. Employee A and Employee D reported that Employee A assisted Employee D, a CEAC employee, in reviewing the Government proposal. We requested any documents produced that included the results of the review. Employee A informed us that no reports were issued on the results of the review, and Employee D informed us that no documents on the results of the review were maintained.

Technical Evaluation WIPT. The Technical Evaluation WIPT reviewed the performance and technical aspects of the contractor and Government proposals and issued two technical reports. The technical evaluation reports discuss matters such as the Government-proposed improvements to the Apache helicopter logistics support while contrasting improvements to the contractor-proposed performance. The reports were provided to AAA for use in the evaluation of the Circular A-76 waiver support that the Assistant Secretary of the Army (Research, Development, and Acquisition) (now Assistant Secretary of the Army [Acquisition, Logistics, and Technology]) requested. One of the technical evaluation engineers informed us that AAA requested that another independent technical review of the Government proposal be performed, and an AAA representative informed us that AAA requested a second look at the Life-Cycle Cost Reduction savings claimed in the Government proposal. One of the technical evaluation engineers also informed us that two members of the original five members in the Technical Evaluation WIPT prepared a second technical report in response to the AAA request, and Employee A informed us that he was assigned as a member of the team and participated in performing the technical evaluation in July 1999, even though he had no role in the first technical evaluation.

The Technical Evaluation WIPT had access to, and evaluated, the Government proposal Life-Cycle Cost Reduction projects and associated savings. Employee A informed us that by the time he was assigned to the Technical Evaluation WIPT, the Government proposal, the contractor proposal,

and the first technical report were known to him because of his membership on the Cost WIPT team. The second technical evaluation confirmed the results of the first evaluation.

Advisor to Commanding General, AMCOM. Employee A and an AMCOM manager informed us that during the process of evaluating the PVS program, Employee A was an advisor to the Commanding General, AMCOM on matters that related to the Government proposal. AMCOM was responsible for preparing the Government proposal. Employee A informed us that the Commanding General, AMCOM was knowledgeable regarding preparation of the Government proposal, as well as most aspects of the PVS program, because at least one AMCOM employee who was a member of the WIPT kept him informed of the PVS program progress. Also, in July 1998, Employee A had access to the contractor proposal as part of the comparison and equalization process by the Cost WIPT. We requested that Employee A provide any briefing charts used to inform the Commanding General, AMCOM. Employee A did not have the briefing material used to brief the Commanding General, AMCOM.

We believe that an individual who assists a Commander in preparing and addressing issues that pertain to the Government proposal should not be involved in a comparative evaluation of the Government and contractor proposals and in making equalizing adjustments and recommendations as either a member of the Cost WIPT or the Technical Evaluation WIPT. The assignment of those multiple functions to the same individual creates an appearance of lack of fairness or impartiality by Government officials.

Employee B. Employee B, a senior logistician, was an employee of AMCOM while involved with the PVS program. An AMCOM management official informed us that Employee B was one of the directly affected¹¹ employees whose position might have been abolished if the contractor proposal succeeded. Employee B was assigned to both the Logistics WIPT (July 1997 through December 1999) and the AMCOM Government proposal team (December 1999 through March 2000), and had access to the contractor proposal.

Logistics WIPT. The Logistics WIPT, within the Alpha Contracting IPT, jointly prepared with contractor representatives the PWS, which formed the basis for the contractor proposal subsequently priced and negotiated. Employee B, the chief of the Logistics WIPT, informed us that he had access to, negotiated, and prepared the PWS. Employee B also worked on the draft Corpus Christi Army Depot/Boeing Teaming Agreement for performing repairs and overhaul of the Apache helicopter at the Corpus Christi Army Depot and participated in determining the workload hours that Team Apache Systems would fill.

¹¹ DoD Strategic and Competitive Sourcing Programs Interim Guidance dated April 3, 2000, defines “directly affected” civilian employees as a civilian employee (for example, DoD civilian, non-appropriated fund employee, or contractor) whose work is being competed.

During the negotiations with Team Apache Systems, Employee B provided in an e-mail to the chief of the Government proposal team (Employee C) a draft teaming agreement and workload hours. Employee B explained that he furnished the data to the Government proposal team because he believed the teaming agreement and the workload hours were already known because PEO personnel and the Procurement Contracting Officer had briefed the information to the Corpus Christi Army Depot employee union and the maintenance officer. However, Employee B could not provide information showing that PEO personnel and the Procurement Contracting Officer had briefed the information prior to his disclosure of the workload hours. We believe that Employee B acted contrary to the legal counsel guidance to maintain firewalls between individuals having access to the contractor and Government proposal, and in contravention of IPT guidance regarding the exchange of information between IPTs. However, we found no evidence of a direct competitive advantage being provided to the Government by the disclosure of the draft teaming agreement or workload hours.

Government Proposal Team. In November 1999 during the PVS Round II, the Under Secretary of the Army tasked AMCOM to update the Government proposal. Employee B informed us that in December 1999, AMCOM assigned him to the Government proposal team. As stated earlier, Employee B was an affected employee whose position could have been eliminated if Team Apache Systems won the competition. Employee B, whose job would be affected and who had already had access to the contractor proposal as a key AMCOM participant in the PVS program evaluation process, should not have been assigned to the Government proposal team to preclude any appearance that proprietary contractor information would be shared with the team responsible for updating the Government's proposal. Assignment of Employee B to the Government proposal team in PVS Round II was inconsistent with the management control standard for separation of duties. Assignment to the Government proposal team was not appropriate because of Employee B access to and involvement in the negotiations pertaining to the contractor's proposal, and the possibility of an inadvertent disclosure of proprietary information and possible contractor innovations to the new Government proposal team.

Discussion With AMCOM Legal Counsel. During our review, we asked AMCOM legal counsel to comment on statements Employee B made to the evaluators that both the contractor and Government proposal sides had questions regarding individuals moving between the contractor and the Government proposal teams and that the AMCOM legal counsel was asked to provide advice regarding the movement. To answer our question, the AMCOM legal counsel informed us that personnel from the legal counsel interviewed Employee B and searched their records for relevant information. The AMCOM legal counsel provided us with the following response:

By way of context, it is important to understand [that] the initial PVS acquisition had been cancelled in October of 1999 when OSD [Office of the Secretary of Defense] determined that the Army would not be permitted to decapitalize from the AWC [Army Working Capital Fund]. Subsequently, the Under Secretary of the Army established a process action team (PAT) that met at Carlisle Barracks,

Pennsylvania, in December of 1999 in [an] attempt to devise other PVS implementation strategies that would permit working within the AWCF. The PAT developed two options that solved the AWCF decapitalization problem, but presented potential fiscal law difficulties. Accordingly, the PAT chose to obtain a legal opinion from DA [Department of the Army] Legal [counsel] to determine their legal sufficiency. This was done in January 2000. However, it was decided to move the Carlisle implementation process along without waiting for a final opinion from DA Legal. We are forwarding an e-mail concerning the initial kick-off meeting, which was scheduled by [Employee C] for 11-13 January 2000. [Employee C] had prepared team roster lists for the new cost comparison that would be conducted for the Carlisle initiative. [Employee B] had been placed on the new BCGC [Best Case Government Cost] team although he had previously been a member of the earlier PVS team and had participated in the alpha negotiation of the original proposed TAS [Team Apache Systems] contract. As the e-mail indicates, we asked to meet with [Employee C] concerning this development. At this meeting we advised him that we thought it was improper for [Employee B] to be a member of the new BCGC team due to the possibility of inadvertently disclosing confidential or proprietary information from the earlier PVS proposal to the new BCGC team even though the original nondisclosure statement signed by [Employee B] was still in effect. The issue became moot, however, on March 23, 2000 when Mr. Matt Reres, DA OGC [Office of General Counsel] issued a legal opinion finding that the two Carlisle developed options were legally unsound. Subsequent to this opinion, the Carlisle effort was abandoned and all teams were disbanded.

Early in the process, the AMCOM legal counsel provided guidance about the need for firewalls between Government and contractor proprietary data and the need for those who had access to such data to sign nondisclosure statements. The Apache PVS program was officially terminated in November 2000 when the Under Secretary of the Army informed the Under Secretary of Defense for Acquisition, Technology, and Logistics that the Army would not pursue the PVS program. We believe that the discussed assignment of Employee B is indicative of the need for statutory or regulatory guidance on Circular A-76 waivers and for strengthening management controls that include separation of duties as well as management control to preclude conflicts of interest.

Employee C. We were informed by Employee C, a supervisory logistician, that he was an employee of AMCOM while involved with the PVS program as the chief of the Government proposal team between November 1997 and approximately September 1999. Although not identified by an AMCOM management official as an affected employee, Employee C was part of an affected organization. As chief of the Government proposal team, Employee C received the PVS baseline data and participated in the adjustment of the baseline for planned efficiency initiatives. Employee C informed us that in December 1999, AMCOM assigned him to direct the PVS Round II. The PVS Round II Team would have access to and review both the contractor and the Government proposals. The PVS Round II was the Army attempt to pursue a modified PVS

program. The PVS Round II would include efforts such as updating the PWS, the Government proposal, keeping the Apache helicopter logistics support within the Army Working Capital Fund, and renegotiating the contract. The team would have access to the Government proposal because it was responsible for updating the proposal. The assignment of Employee C to the PVS Round II Team was also inconsistent with the management control standard of separation of duties. Moreover, to preserve an appearance of independence and impartiality, the chief of the Government proposal team should not participate in the subsequent evaluation of the adequacy of the Government proposal.

Formal Training

An AMCOM management official informed us that AMCOM did not provide formal training on processing Circular A-76 waiver evaluations of Government and contractor costs to its personnel involved in the PVS program. Army Regulation 5-20, "Commercial Activities Program," October 1, 1997, requires that Army major commands and their subordinate commands provide training on the policies and procedures on the Commercial Activities Program for their personnel. The head of the AMCOM strategic planning team, who was also in charge of the Government proposal team, agreed with the potential benefits from such training

Fairness or Impartiality in Evaluating Government and Contractor Proposal

The assignments of the cited three employees were inconsistent with Part 3 of the Federal Acquisition Regulation and DoD guidance on management controls, which includes separation of duties. Lack of separation of duties resulted in a potential for conflicts of interest and may have created an appearance of lack of fairness or impartiality in conducting the evaluation of the Government and the contractor proposals. While we did not identify any actual instances of disclosure or transfusion of contractor proprietary data to employees involved in preparation of the Government proposal or the incorporation of such data in the Government proposal, we have identified instances when such opportunities, and the inadvertent disclosure of contractor proprietary information, could have occurred as the result of multiple responsibilities assigned to various Government employees.

Management Comments on the Finding and Evaluation Response

Deputy Under Secretary of Defense for Installations and Environment Comments. The Deputy Under Secretary generally concurred with the findings but requested that two clarifications be made to the terminology used in the draft

report. The Deputy Under Secretary requested that references to “Government proposal” be changed to either “PVS baseline” or “Government performance” because the type of “Government proposal” referenced in the report is not the type of proposal required to be submitted in accordance with a formal solicitation the Federal Acquisition Regulation requires. The Deputy Under Secretary also requested that references to “cost comparison” waiver be changed to either “evaluation of Government and contractor costs” or to “the cost of Government performance compared to the cost of contractor performance” because a formal cost comparison process is not required to justify a waiver from Circular A-76 requirements.

Evaluation Response. We added a footnote to clarify that use of the term “Government proposal” should not be interpreted as a proposal submitted in accordance with a solicitation the Federal Acquisition Regulation requires. We changed references to “cost comparison” waiver to generally either “evaluation of Government and contractor costs” or to “the cost of Government performance compared to the cost of contractor performance.”

Other Comments. In addition to the comments requested from the Deputy Under Secretary of Defense for Installations and Environment and the Assistant Secretary of the Army (Acquisition, Logistics, and Technology), we also received comments from the Defense Hotline complainant and AMCOM. The comments from AMCOM were endorsed by AMC. The complainant comments and our response to those comments are summarized in Appendix J. The AMCOM comments and our response to those comments are summarized in Appendix K.

Recommendations, Management Comments, and Evaluation Response

A.1. We recommend that the Deputy Under Secretary of Defense for Installations and Environment develop guidance that addresses actual and apparent conflicts of interest and segregation of duties for Circular A-76 waiver evaluations of Government and contractor costs including a requirement for appropriate training.

Office of the Deputy Under Secretary of Defense for Installations and Environment Comments. The Director, Competitive Sourcing and Privatization, Office of the Deputy Under Secretary concurred and requested changing the terminology “Circular A-76 waiver cost comparisons” to “Circular A-76 waiver evaluations of Government and contractor costs.” He also requested changing “Limiting membership of ‘directly affected’ persons in the working groups” to “Ensuring that ‘directly affected’ persons do not assist and are not members of any working group that has access to the contractor proposal, except when exempted by the head of contracting activity in accordance with ethics and standards of conduct rules and procurement restrictions in section 423, title 41, United States Code, and Federal Acquisition Regulation 3.104.”

Evaluation Response. We made the requested changes to the report. We request that additional comments be provided detailing the planned corrective actions and estimated completion date for the actions.

A.2. We recommend that the Army Assistant Chief of Staff for Installation Management update Army Regulation 5-20, “Commercial Activities Program,” to require Army organizations that have oversight of Army commercial activities procurements and Circular A-76 waiver evaluations of Government and contractor costs develop a management control plan for each procurement. The plan should include, at a minimum, descriptions of the actions required to avoid conflicts of interest, including:

a. Ensuring that ‘directly affected’ persons do not assist and are not members of any working group that has access to the contractor proposal, except when exempted by the head of contracting activity in accordance with ethics and standards of conduct rules and procurement restrictions in section 423, title 41, United States Code, and Federal Acquisition Regulation 3.104.

b. Separating the duties of persons responsible for preparing the Government proposal, evaluating the contractor proposal, and evaluating the Government and contractor costs, when possible.

c. Limiting the number of persons who have access to and evaluate both the Government and contractor costs, and carefully instructing such persons regarding their responsibility, to include the nondisclosure of contractor proprietary information.

d. Providing appropriate training to employees involved in processing Circular A-76 waiver evaluations of Government and contractor costs.

e. Using legal services to assist in avoiding conflicts of interest.

Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments. The Deputy for Systems Management, Office of the Assistant Secretary agreed with the revised recommendation but requested that the recommendation be redirected to the Army Assistant Chief of Staff for Installation Management.

Evaluation Response. We redirected the recommendation as requested. We request that the Army Assistant Chief of Staff for Installation Management provide comments detailing the planned corrective actions and estimated completion date for the actions.

B. Basis Used During Circular A-76 Waiver Process

The Government proposal used for the Circular A-76 waiver analysis of the PVS program was not based on the PWS that was negotiated with the contractor, and an independent review of the costs used in preparing a Circular A-76 waiver was not performed. Those conditions occurred because little statutory or regulatory guidance pertaining to Circular A-76 waivers existed at the time the majority of the PVS program actions took place. As a result, no assurance was present that costs used in preparing the Circular A-76 waiver were realistic and fair.

Criteria

Section 2462, Title 10, United States Code. The need to conduct comparisons based on a common requirement baseline is in section 2462, title 10, United States Code (10 U.S.C. 2462). The 10 U.S.C. 2462 requires, “For the purpose of determining whether to contract with a source in the private sector for the performance of a Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such a source with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense shall ensure that all costs considered . . . are realistic and fair.” The section does not address how costs will be determined to be realistic and fair.

Army Regulation 5-20. Army Regulation 5-20 implements the requirements of Circular A-76. Army Regulation 5-20 states that the waiver request must contain documentation that demonstrates that the various legal restrictions on converting DoD functions to contract (such as Section 8015 of the FY 1997 DoD Appropriation Act and 10 U.S.C. 2461, 2462, and 2465) do not apply. (Approval of an ‘OMB Circular A-76 waiver’ does not constitute a waiver of any law.)¹²

Army Regulation 11-18. Army Regulation 11-18, “The Cost and Economic Analysis Program,” January 31, 1995, establishes responsibility and policy for the Army Cost and Economic Analysis Program. The regulation requires that CEAC implement the Army Cost and Economic Analysis Program and review cost and economic analyses or other cost comparisons. The regulation also requires that the CEAC administer the Visibility and Management of Operating

¹² On August 6, 1998, the Army Deputy General Counsel (Acquisition) informed the Military Deputy of the Assistant Secretary of the Army (Research, Development, and Acquisition) that the OMB Circular No. A-76 Revised Supplemental Handbook “makes clear that the issue of a cost comparison waiver only relieves an agency from the Circular and associated Handbook’s cost comparison requirements.”

and Support Cost Program process.¹³ In addition, the regulation requires that the Army validate cost and economic analyses and other cost comparisons to ensure currency, reasonableness, and completeness for use in decision making.

Performance Work Statement

The Government proposal used for the Circular A-76 waiver analysis of the PVS program was not based on the PWS negotiated with the contractor.

Preparing the Government Proposal. As the lead agency, the PEO was responsible, with support from AMC and AMCOM, for managing the PVS procurement and for preparing the PVS baseline, which was subsequently revised and became the Government proposal.

Tasking for the PVS Program. The original tasking to the PEO from Headquarters, Department of the Army was to accomplish the PVS program within the funding constraints and limitations of the budget. The Budget Estimate Submission and Program Objective Memorandum, defined as FY 1999 through FY 2003 for the evaluation, was established as the PVS baseline. The PEO informed us that the Army intended to compare the PVS baseline with the contractor proposal and determine whether the cost in the contractor proposal would be less than the PVS baseline while improving the then-current readiness levels. The unsigned minutes of a November 1997 meeting of the General Officer Steering Committee indicate that the committee approved details of the PVS baseline and methodology, pending final CEAC verification.

The Government Proposal. After consultation between the PEO and the legal counsel of AMCOM, according to the Chief of the Business IPT, it was decided that the Government should be able to offer additional information or improvements to the PVS baseline. The additional information as well as any improvements would become a part of the Government proposal. Thus, the PVS baseline, prepared by the Cost WIPT, became the starting point for preparing the Government proposal. AMCOM adjusted the PVS baseline by subtracting the dollar amount for the savings from the Army's planned improvements to derive the Government proposal. Examples of the Army's planned improvements were initiatives such as Modernization Through Spares and Life-Cycle Cost Reductions. The Government proposal was dated March 1998.

Development of a PWS. An AMCOM legal office representative informed us that AMCOM and the contractor developed a PWS during the Alpha negotiations. The PWS or equivalent document is used during the Circular A-76 process as a common basis by the contractor and the Government for comparison of proposals. The Procurement Contracting Officer and the chief of the Business IPT stated that the PWS was developed with participation from AMCOM personnel using a list of AMCOM missions and functions. The

¹³ The Operations and Support Management Information System that is managed by CEAC is a major portion of the Visibility and Management of Operating and Support Cost program.

AMCOM legal counsel also reviewed the PWS for legal sufficiency. The AMCOM legal counsel concluded that the PWS met the criteria for legal sufficiency. Working jointly with the contractor, the Logistics WIPT prepared the PWS between January and June 1998 and coordinated the PWS with AMCOM and other Army organizations.

Use of the PWS. The Army did not use the PWS as the basis when preparing the Government proposal. The head of the Government proposal team stated that the PWS was not used because the Government proposal was based on the information and data in the PVS baseline after adjustments for efficiencies.

Comparability of the Contractor and the Government Proposals. As a result of using the adjusted PVS baseline rather than the PWS to prepare the Government proposal, the contractor and Government proposals were no longer comparable, as they were not based on a common level of performance. Guidance pertaining to Circular A-76 waivers did not address a requirement for a common requirements baseline and identification of costs to be included in the comparison. The PEO attempted to equalize the contractor and Government proposals and included the adjustments, that the PEO considered necessary, in a request for waiver of Circular A-76. The PEO used the Cost WIPT evaluation of Government and contractor costs as the starting point for the equalizing process in the waiver. Subsequently, AAA reviewed the Circular A-76 waiver and reached different conclusions regarding some of the equalization adjustments. Concurrent with AAA reviews and revisions of the Circular A-76 waiver, the Office of the Army Deputy Chief of Staff (Operations and Plans) confirmed a need for additional services, such as engineering support, offered by the contractor. The revisions resulted in changes in the determination of whether the PVS function could be more economically performed by the Government or the contractor.

Independent Review

An independent review of the costs used in preparing a Circular A-76 waiver request was not performed. Such an independent review should have been conducted by a person or organization who does not have a stake in the outcome of the review to ensure that the evaluation of Government and contractor costs estimate and any equalizing adjustments are current, reasonable, and complete for use in decision making.

Importance of Independent Review. Conducting independent reviews of the Government proposal and the costs used in preparing the Circular A-76 waiver may have detected the lack of comparability between the Government and contractor proposals, and brought to management's attention the issues of which costs are fair and realistic, and which costs should have been included in the waiver evaluation of Government and contractor costs. An independent review is an appropriate management control that provides an impartial and organizationally independent assessment of the validity for proposals and evaluations other organizations prepare. The separation of duties between the preparer or evaluator and the independent reviewer helps ensure that proposals and evaluations are realistic and fair. Conducting an independent review

minimizes the potential for appeal on the decision of whether to grant a waiver. In addition, existing regulatory guidance, though not explicitly applicable to Circular A-76 waivers, indicates the importance and need for conducting independent reviews because of the significance of resulting decisions. For example, the “Army Economic Analysis Manual,” July 1995, requires that economic analyses of high dollar value or high visibility have a thorough validation. Also, Army Regulation 11-18 requires that the Army validate costs and economic analyses and “other cost comparisons” to ensure currency, reasonableness, and completeness for use in making decisions. According to 10 U.S.C. 2462, costs used when determining whether to contract with a source in the private sector for performance of a DoD function are to be realistic and fair. The statute does not describe how to ensure the requirement should be achieved.

AMCOM Review. Review of the costs used in preparing the Circular A-76 waiver by a senior employee in the AMCOM command group (Employee A in finding A) was not an independent review. Employee A and an AMCOM manager informed us that Employee A acted as an advisor to the Commanding General, AMCOM on issues that related to the Government proposal. An AMCOM official informed us that the directorate for which Employee A was responsible was identified as an organization that would be impacted by the results of the PVS program. Employee A informed us that he was a member of the Cost WIPT that developed the PVS baseline and participated in the Government proposal review with CEAC Employee D. Also, Employee A was a member of the Cost WIPT that compared the PVS baseline, the contractor proposal, and the Government proposal. In addition, Employee D informed us that Employee A was a member of the Technical Evaluation WIPT that performed a second review of the reported Life-Cycle Cost Reduction savings in the Government proposal. Employee A stated that his role throughout the process was as an evaluator. Army policy in the Army Cost and Economic Analysis Manuals requires that significant cost estimates shall be reviewed, and that an organization independent of the one preparing the cost estimate shall document the review. The Revised Supplemental Handbook to OMB Circular A-76, Part I, chapter 3, paragraph I, also states that the independent reviewer should be a qualified person from an impartial activity that is organizationally independent of the commercial activity being studied and the activity preparing the evaluation of Government and contractor costs. Under the Army and OMB standards, the review of costs by Employee A was not an independent review.

CEAC Review. Employee D, a CEAC mid-level employee, roles and actions did not constitute those of an independent reviewer. Employee D informed us that he participated in preparing the PVS baseline using data from the Army Operating and Support Management Information System that CEAC managed. The PVS baseline was the foundation for the Government proposal. Employee D then participated in reviewing the Government and contractor proposals as a member of the Cost WIPT. A person who participates in preparing a cost baseline should not be involved in the review of such baseline. The CEAC Cost Analysis Manual requires that the preparer of an estimate and the reviewer of that estimate are separate. In addition, we believe that a person who participates in performing the evaluation of Government and contractor costs should not participate in a subsequent review of such costs with AAA.

After the waiver was submitted in October 1998, AAA responded to various taskings from the Under Secretary of the Army, Assistant Secretary of the Army (Acquisition, Logistics, and Technology), and Assistant Secretary of the Army (Financial Management and Comptroller). Employee D participated with AAA through July 1999 in performing tasks related to the waiver evaluation of Government and contractor costs.

Army Audit Agency (AAA) Review. AAA did not perform an independent review of the Government cost estimate as defined in Army Regulation 5-20. Army Regulation 5-20 requires the completed Government cost estimate and supporting documentation be provided to AAA for independent review at least 60 days before that estimate is due to be submitted to the contracting officer. In a review, AAA is required to verify the reasonableness of the cost estimates and also to verify if the most efficient organization is based on the same work performance requirements. AAA did not perform an independent review of the Government cost estimate before the estimate was submitted to the contracting officer. The AAA was tasked to provide consulting reports and briefings to the Under Secretary of the Army and other Army officials after the waiver request was submitted to the then Assistant Secretary of the Army (Installation, Logistics, and Environment) for approval. AAA could not have performed the independent review function because the Government proposal was based on budgetary estimates. The Government never prepared a management plan or most efficient organization. AAA could not make a determination that the proposed most efficient organization and in-house cost estimate were adequate to perform the PWS because the Government proposal was not based on a most efficient organization and an in-house cost estimate, which was based on the staffing and other costs reflected in the most efficient organization and management plan. Consequently, AAA could not perform the type of independent review required for Circular A-76 cost comparisons.

Determination of Retail Supply System Requirements in the Government Proposal. One of the issues identified in the Defense Hotline allegation was that the Government proposal understated the retail supply system requirements applicable to the special repair activities. The PWS requires that the contractor meet the requirements for the special repair activities. Both Employee C and Employee D informed us that the Army Operating and Support Management Information System used in preparation of the Government proposal did not capture part of the retail requirements of the activities. We believe a review of the Government proposal by an organization that did not assist in compiling such a proposal might have identified the issue.

AMCOM Response. The AMCOM response did not clarify how the Government proposal included all retail supply system requirements. The person in charge of preparing the Government proposal informed us that, under the system that was in place when the Government proposal was prepared, if retail parts requirements of the special repair activities were filled through the wholesale supply system, then the requirements were captured in the Government proposal. The AMCOM official did not comment on the manner with which the CEAC-managed system processed the requirements and did not state that retail supply system requirements were included in the Government proposal.

CEAC Response. CEAC was aware of the missing requirements. A CEAC representative stated that until December 2000, a portion of the requirements for special repair activities was not captured by the CEAC-managed system (CEAC used that system to accumulate the PVS baseline costs). The CEAC representative also stated that the PVS function was to replace only the wholesale supply system and not the retail supply system requirements.

Subsequently, two CEAC representatives stated that the missing requirements for the retail parts were known to the Cost WIPT and an adjustment to correct the error was made. However, the adjustment did not include the missing requirements, which was an oversight of the Cost WIPT. The CEAC representatives also emphasized that the missing requirements did not diminish reliability of the Operating and Support Management Information System because of the potentially small amount of understated requirement.

Identification of the Missing Requirements. The PWS document required filling the retail supply system requirements of the special repair activities. Because it did not include all of the retail supply system requirements, the Government proposal was incomplete. Further, the AMCOM and CEAC reviews did not identify the missing requirements. An independent review might have detected the missing requirements. The scope of the independent review should have included an examination about whether the Government proposal was based on satisfying the requirements in the PWS prepared by the Government and the contractor during the Alpha negotiations. A review such as that would have identified the absence of a common basis for comparing the Government and the contractor proposals.

Statutory or Regulatory Guidance for Conducting Circular A-76 Waivers

Little statutory or regulatory guidance pertaining to Circular A-76 waivers existed at the time the majority of the PVS program actions took place. However, on April 3, 2000, the Under Secretary of Defense for Acquisition and Technology (now the Under Secretary of Defense for Acquisition, Technology, and Logistics) issued interim guidance that included criteria for the Circular A-76 waiver process. Some of the terms included in the interim guidance were not sufficiently defined to avoid misinterpretation. Examples of terms that were not sufficiently defined were the requirement to include “sufficient justification, supporting analysis, and data” in the waiver request and the request shall include “detailed analysis”

Because a waiver does not exempt DoD from applicable law, DoD guidance should address the statutory requirements pertaining to, and ambiguities in, the current guidance regarding Circular A-76 waivers. The guidance should include:

- comparison of competing proposals based on a common requirements baseline,

-
- criteria for determining realistic and fair costs, and
 - need to have significant cost estimates and comparisons reviewed by an independent organization.

Because of the significance of waivers, we believe additional regulatory guidance is needed to ensure that Circular A-76 waiver evaluations of Government and contractor costs are conducted fairly and meet all statutory and regulatory requirements.

Conclusion

In October 1997, the Army made a preliminary determination that the contracting-out requirements of OMB Circular A-76 were not applicable and began pursuing a waiver from Circular A-76 requirements. Although the Army pursued the waiver request for more than 3 years until a decision was made on November 28, 2000, not to further pursue the PVS initiative, the waiver was never approved. The lack of specific guidance for Circular A-76 waivers contributed to the lengthy and inconclusive review process. During the 3-year period, the PEO, AMCOM, CEAC, and AAA were involved in several studies, working groups, consulting reports, end-state analysis, Army Working Capital Fund impact analyses, cash flow analyses, and other reviews, in an effort to get agreement from all of the parties on a common baseline of equal performance and equal scope.

No assurance existed that costs used in preparing the Circular A-76 waiver request were realistic and fair. Absence of clear statutory or regulatory guidance led to conflicting interpretations regarding the basis for determining a common requirement base and of what constitutes fair and reasonable costs to be considered for the Circular A-76 waiver evaluation of Government and contractor costs. Providing guidance for conducting Circular A-76 waivers, similar to that required for full Circular A-76 evaluations of Government and contractor costs, would help avoid many of the issues identified in this evaluation.

On November 19, 2002, OMB proposed major revisions to OMB Circular No. A-76. OMB pointed out a variety of factors that have limited the Circular's use and effectiveness including the factor that the competition process is complicated and not well understood.

Recommendations, Management Comments, and Evaluation Response

B.1. We recommend that the Deputy Under Secretary of Defense for Installations and Environment propose to the Office of Management and Budget during the revision to Circular A-76 to clarify procedures for cost comparison waivers that include the following:

a. **Require the use of a common requirements baseline to determine if a cost comparison waiver is justified.**

b. **Require the use of fully allocated costs (in accordance with Office of Management and Budget Circular No. A-76 Revised Supplemental Handbook Part II and Department of Defense A-76 Costing Manual) to determine the cost of in-house performance in evaluation against the cost of contract performance for cost comparison waivers.**

c. **State how the Government determines the basis for determining whether private sector costs are realistic and fair when the basis for the cost comparison waiver is based on a significant financial improvement.**

d. **Require an independent review of the cost comparison waiver analysis prior to approval.**

Deputy Under Secretary of Defense for Installations and Environment Comments. The Director, Competitive Sourcing and Privatization concurred with the recommendation and requested that it be revised from the Deputy Under Secretary of Defense for Installations and Environment developing guidance regarding Circular A-76 cost comparison waivers to the Deputy Under Secretary proposing that OMB during the revision to Circular A-76 clarify procedures for cost comparison waivers.

Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments. Although not required, the Deputy for Systems Management, Office of the Assistant Secretary agreed with this recommendation.

Evaluation Response. We revised the recommendation as requested by the Director. We request the Deputy Under Secretary provide comments detailing the planned corrective actions.

B.2 We recommend that the Army Assistant Chief of Staff for Installation Management, after the Office of Management and Budget issues the guidance in Recommendation B.1., revise Army Regulation 5-20, “Commercial Activities Program,” to identify the appropriate independent review organization for Circular A-76 waivers.

Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments. The Assistant Secretary concurred and requested that the recommendation be readdressed to the Army Assistant Chief of Staff for Installation Management.

Evaluation Response. We redirected the recommendation as requested. We request that the Assistant Chief of Staff for Installation Management provide comments that will detail the planned corrective actions and estimated completion dates for the actions.

Appendix A. Scope and Methodology

We reviewed the following documents:

- Allegation to the Defense Hotline;
- Applicable laws, regulations, and instructions;
- The Justification and Approval for Other Than Full and Open Competition, dated October 2, 1997; an announcement in the Commerce Business Daily for the Apache PVS program procurement dated October 27, 1997; and versions of the PWS dated January 19, 1998, through January 12, 1999;
- The Team Apache Systems' proposal (the contractor proposal) negotiated on June 22, 1998; the Best Case Government Cost (the Government proposal) dated March 20, 1998, including updates through July 1998; and the Circular A-76 waiver request dated October 20, 1998;
- Minutes of the General Officer Steering Committee between July 1997 and April 1998 and minutes of the IPTs from June 1997 through November 1999;
- AAA consulting reports and briefing charts presented to Army decision makers from August 1998 through August 2000; AAA working papers and supporting documents; and CEAC supporting documents;
- 201 nondisclosure statements signed by persons who participated in the Apache PVS program; and
- Numerous e-mail messages to and from numerous individuals at involved organizations.

We visited and interviewed the originator of the Defense Hotline allegation and personnel in the following organizations:

- Office of the Principal Assistant Deputy Under Secretary of Defense (Logistics);
- Office of the Deputy Under Secretary of Defense for Installations and Environment;

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- Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology); Office of the Assistant Secretary of the Army (Financial Management and Comptroller); Office of the Assistant Secretary of the Army (Installations and Environment); Army Office of General Counsel; Office of the Army Deputy Chief of Staff (Logistics); and
 - AMC, Defense Logistics Agency, AMCOM, PEO, AAA, and CEAC.

Our evaluation scope was limited to reviewing compliance with management controls applicable to the evaluation of the contractor proposal and the Government proposal, as they relate to the Defense Hotline allegation. The evaluation scope did not include an attempt to verify the appropriateness or accuracy of dollar amounts shown in the contractor proposal and the Government proposal or the adjustments made to each proposal. Further, the evaluation scope did not include determining which of the two proposals would be more advantageous to the Army.

We performed this evaluation from July 2000 through June 2002 in accordance with evaluation standards established by the Inspector General of the Department of Defense. This evaluation relied on review of documentation and on testimonial evidence obtained through inquiries and interviews with the personnel involved in the PVS process and the Circular A-76 waiver process. We did not fully meet the Inspector General of the Department of Defense evaluation standards. Specifically, we did not fully meet the evidence standards set forth in Government Auditing Standards 6.46 that we have incorporated into our evaluation standards. We were not able to fully verify all statements of fact contained in the report and an experienced auditor having no previous connection with the evaluation would have difficulty ascertaining from the working papers evidence that supports the evaluators' conclusions and judgments. However, we believe that the verifiable information available is sufficient to support the findings, conclusions, and recommendations made in this report.

Use of Computer-Processed Data. We did not use computer-processed data to perform this evaluation.

Use of Technical Assistance. Members of the Office of the General Counsel, Office of the Inspector General of the Department of Defense reviewed the evaluation report for legal adequacy and interpreted laws, regulations, and instructions.

High-Risk Area. The General Accounting Office has identified several high-level risk areas in DoD. This report provides coverage of the Defense Inventory Management and the Defense Contract Management high-risk areas.

Appendix B. Prior Coverage

During the last 5 years, the General Accounting Office issued one audit report and the AAA issued five consulting reports that discuss the Apache helicopter PVS program. The Office of the Inspector General of the Department of Defense did not issue during the last 5 years any reports that discuss the PVS program. General Accounting Office reports can be accessed at <http://www.gao.gov>.

General Accounting Office

General Accounting Office, Report No. GAO-01-630, "Defense Logistics: Information on Apache Helicopter Support and Readiness," July 17, 2001

General Accounting Office, Report No. NSIAD 99-140, "Army Logistics: Status of Proposed Support Plan for Apache Helicopter," July 1, 1999

Army Audit Agency

Consulting Report No. AA 00-704, "Review of the Apache Prime Vendor Support – Cash Flow Analysis," October 19, 1999

Consulting Report No. AA 99-762, "Review of the Effect of Apache Prime Vendor Support Contract on the Army Working Capital Fund," June 25, 1999

Consulting Report No. AA 99-733, "Review of the Best Case Government Cost to Support the Apache," March 16, 1999

Consulting Report No. AA 99-729, "Review of the A-76 Waiver Package for Apache Prime Vendor Support," February 22, 1999

Consulting Report No. AA 98-765, "Review of Apache Prime Vendor Support Contract," August 17, 1998

Appendix C. Glossary

Alpha Contracting Negotiations. Alpha contracting is an innovative technique that converts the contracting process from a consecutive (and often iterative) process into a concurrent process. Alpha contracting relies on a team approach to concurrently develop a scope of work, price that scope, and prepare the contract to execute the scope. Alpha contracting negotiations are used in sole-source negotiated situations.

Apache Helicopter Prime Vendor Support Program. The Prime Vendor Support (PVS) program used DoD logistics reengineering concepts designed to use commercial sources to provide logistics support and assign oversight of life-cycle support to the program manager. The PVS program was intended to provide streamlined and complete system management and logistics support for the Apache helicopter. The Apache helicopter major equipment manufacturers teamed together to propose a full range of logistics support along with continuous product improvement and modernization as the PVS program.

Best Case Government Cost. The Best Case Government Cost, or the in-house cost estimate, is the Government's proposal for commercial activity functions subject to in-house or contractor performance. In this evaluation report, we refer to the Best Case Government Cost as the Government proposal.

Performance Work Statement. The performance work statement (PWS) provides the technical, functional, and performance characteristics of the work to be performed. The PWS identifies essential functions to be performed, determines performance factors such as the locations of work, units of work, quantity of work units, and quality and timeliness of work units (performance standards, measures, and time frames). For Circular A-76 cost comparisons, the PWS is the basis for determining whether performing a function is cheaper in-house or by contract.

Prime Vendor Support Program Baseline. The Prime Vendor Support program baseline (PVS baseline) represented the total cost that the Government budgeted to procure, operate, and maintain logistics support for the Army's Apache helicopters. The PVS baseline consolidated budgeted costs in the mission areas of end-item management, unit operations, and direct and indirect system support. The PVS baseline was intended as a monetary control that would not be exceeded in implementing the PVS program.

Appendix D. DoD Logistics Reengineering Efforts

In recent years, DoD concluded that its logistics support system needed to be more efficient and effective in meeting warfighter needs. Additionally, section 912(c) of the National Defense Authorization Act for FY 1998 directs that the Secretary of Defense submit to Congress an implementation plan that streamlines the DoD acquisition organizations, workforce, and infrastructure. In the report, “U.S. Department of Defense, Secretary of Defense, Actions to Accelerate the Movement to the New Workforce Vision,” April 1, 1998, the Secretary of Defense committed to conduct several studies with the view toward adopting best commercial practices in reengineering DoD product support processes. One of the studies directed establishment of a Program Manager Oversight of Life-Cycle Support.

Program Manager Oversight of Life-Cycle Support. The Program Manager Oversight of Life-Cycle Support initiative was a reengineering product support process designed to improve the logistics support systems in DoD. In the report, “U.S. Department of Defense, Secretary of Defense, Actions to Accelerate the Movement to the New Workforce Vision,” the Secretary of Defense stated that:

In today’s environment, most program executive officers (PEOs) and program managers (PMs) have direct responsibility and control of funding for development and fielding weapons systems and equipment. Once the system or equipment is fielded, the PM retains overall responsibility for the system or equipment, but loses control of significant portions of the funding required for support.

This practice results in much higher life-cycle costs than should be the case because the PEO and PM have no incentive to take action, during development or modification of the systems, to design into the equipment features that will improve the reliability, availability and maintainability of the fielded system; and it divides the responsibility important to incentivize proper tradeoffs during development, acquisition and modification and to control total ownership costs. Funding control improves program stability and allows PMs to optimize the effectiveness of and support for their weapon system.

Selection of Pilot Programs. Section 816(a) of the National Defense Authorization Act for FY 1999 states that:

The Secretary of Defense, acting through the Secretaries of the Military Departments, shall designate 10 acquisition programs of the Military Departments as pilot programs on program manager responsibility for product support.

In response to Section 816(a), the Under Secretary of Defense (Acquisition and Technology) (now Under Secretary of Defense for Acquisition, Technology, and Logistics) selected 10 of 30 pilot programs to report to Congress. The Apache helicopter was one of the 10 acquisition pilot programs and included implementation of the PVS program.

Appendix E. Chronology of Significant Events

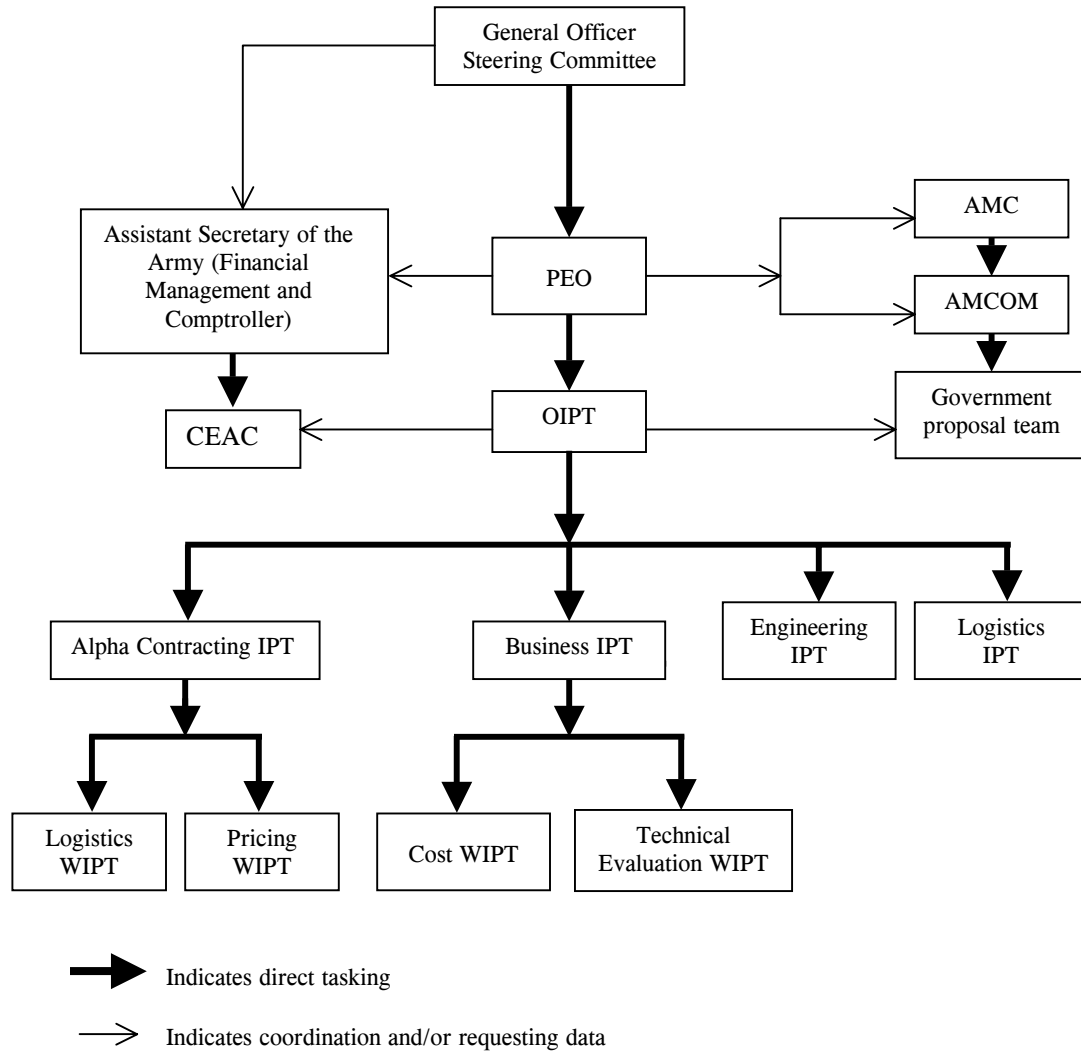
April 1997	Army received unsolicited proposal from Team Apache Systems that would provide PVS for the Apache helicopter
May 1997	PEO designated as lead agency with support from AMC and AMCOM
September 1997	PEO tasked AMC to prepare estimate of Government most efficient organization
October 1997	<p>Acting Assistant Secretary of the Army (Research, Development and Acquisition) signed Justification and Approval for Other Than Full and Open Competition</p> <p>Army notified Congress, in compliance with 10 U.S.C. 2461, of its intent to analyze the Apache helicopter PVS program for possible change to performance by the private sector</p> <p>AMC designated AMCOM as logistical integrator for Apache PVS and Government proposal</p>
November 1997	PEO provided Government PVS baseline to AMCOM to prepare the Government proposal. AMCOM began preparing the Government proposal
January 1998 through June 1998	Preparation of PWS by Logistics WIPT with contractor participation during the Alpha negotiation and coordination of PWS with AMCOM and other Army organizations
March 1998	Government proposal submitted by AMCOM to AMCOM legal counsel (additionally, six updates were submitted between April 1998 and July 1998)
April 1998	<p>Final PVS program cost baseline completed by PEO and reviewed by CEAC</p> <p>Contracting Officer received initial Team Apache Systems' proposal (contractor proposal)</p>
June 1998	<p>Government proposal submitted by AMCOM legal counsel to PEO representative</p> <p>CEAC completed review of the Government proposal</p> <p>Alpha negotiation of the PWS and contractor proposal concluded and price agreement reached</p> <p>Cost WIPT received contractor proposal</p>

July 1998	Last update to the Government proposal by AMCOM (based on data provided by AMCOM)
August 1998 through August 2000	AAA and CEAC evaluated the proposed PVS contract controls and later the Circular A-76 waiver request package and provided briefings to the Under Secretary of the Army
September 1998	Cost WIPT equalized contractor proposal and Government proposal
October 1998	Circular A-76 waiver request submitted to the Assistant Secretary of the Army (Installation, Logistics, and Environment) [now Assistant Secretary of the Army (Installations and Environment)] with a different set of equalization adjustments
December 1998	Assistant Secretary of the Army (Research, Development, and Acquisition) (now Assistant Secretary of the Army [Acquisition, Logistics, and Technology]) tasked AAA to review the waiver request to determine if it was complete and reasonable
February 1999	Under Secretary of Defense (Acquisition and Technology) (now Under Secretary of Defense for Acquisition, Technology, and Logistics) selected Apache helicopter as one of 10 pilot acquisition programs to report to Congress as required by section 816(a) of the National Defense Authorization Act for FY 1999
October 1999	Army informed Team Apache Systems that PVS could not be executed
November 1999	Under Secretary of the Army tasked AMCOM to review the inventory decapitalization issue as part of the PVS Round II
March 2000	Army Office of the General Counsel stated that two alternatives AMCOM and the Assistant Secretary of the Army (Financial Management and Comptroller) developed during PVS Round II that address the inventory issue had serious deficiencies. Deficiencies included issues such as: accepting replacement of parts in-kind was inconsistent with the statutory requirement to reimburse the Army Working Capital Fund with cash or a charge to applicable appropriations, use of Operations and Maintenance funds for product improvement for Apache Model D was inappropriate, and failure to retain all of the incentive benefits of the fixed price per flying hour because inventory reduction would accrue to the Army Working Capital Fund and not the contractor.
April 2000	Commanding General, AMCOM concluded that it was doubtful that the Apache helicopter PVS program could proceed (after decision by the Army Office of the General Counsel regarding the inventory alternatives in the PVS Round II) and directed that pertinent files be archived and personnel involved return to their normal duties

August 2000	Under Secretary of Defense (Acquisition and Technology) (now Under Secretary of Defense for Acquisition, Technology, and Logistics) sent memorandum to the Chief of Staff of the Army recommending implementation of the contractor proposal for the PVS program
November 2000	Under Secretary of the Army informed the Under Secretary of Defense for Acquisition, Technology, and Logistics that the contractor proposal for the PVS program did not meet Army needs

Appendix F. Army Organization Structure in the PVS Program Evaluation Process

(Main organizations involved in the review through October 1998, the date of the submission of the Circular A-76 waiver¹⁴)



¹⁴ See Appendix G for Army Participants and Roles in the PVS Program Evaluation Process.

(Main organizations involved in the review after October 1998, the date of the submission of the Circular A-76 waiver¹⁵)

Army Audit Agency
Army Aviation and Missile Command
Army Cost and Economic Analysis Center
Army Materiel Command
Army Program Executive Office, Aviation
Office of the Army General Counsel
Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
Under Secretary of the Army

¹⁵ Other organizations in the first page of Appendix F did not officially dissolve after the waiver submission.

Appendix G. Army Participants and Roles in the PVS Program Evaluation Process¹⁶

General Officer Steering Committee. The General Officer Steering Committee was co-chaired by Army Assistant Vice Chief of Staff; Deputy Commanding General, AMC; and Military Deputy to the Assistant Secretary of the Army (Research, Development, and Acquisition). Membership included several other Army General Officers and senior executives. The General Officer Steering Committee had oversight of the IPT process and designated the PEO as the lead agency for the PVS program.

PEO. The PEO (including Project Manager and Deputy Project Manager for the Apache), was the lead agency in PVS program evaluation with support and direct tasking authority within AMC. The PEO provided periodic briefings to the General Officer Steering Committee and other interested Army organizations and individuals. The PEO signed the Circular A-76 waiver request.

AMCOM. AMCOM was an active participant in the entire PVS program evaluation and provided members to IPTs and WIPTs. AMCOM also participated in General Officer Steering Committee briefings.

Government Proposal Team. The Government Proposal Team was chaired by an employee of AMC and later an AMCOM employee. Members included AMCOM employees and various AMC major subordinate commands. The Government Proposal Team prepared the Government proposal primarily based on the PVS baseline adjusted for the Army's planned improvements.

OIPT. The OIPT was chaired by Deputy Project Manager for the Apache. Membership included the Alpha Contracting, Business, Engineering, and Logistics IPTs. The OIPT met periodically to review PVS program issues and actions. The OIPT also assigned responsibilities for issues and actions, defined goals, and set milestones.

Alpha Contracting IPT. The Alpha Contracting IPT was chaired by an AMCOM procurement contracting officer. Membership included the Pricing and Logistics WIPTs. The Alpha Contracting IPT had oversight of the Alpha negotiations with the contractor that were conducted by the Logistics and Pricing WIPTs, and preparing the Circular-76 waiver request.

Logistics WIPT. The Logistics WIPT was a part of the Alpha Contracting IPT. The Logistics WIPT participated in conducting Alpha negotiations with the contractor to prepare the PWS and the Corpus Christi Army Depot workload applicable to the PVS program scope.

¹⁶ Includes only the main scope of work for the main participants. Documents that identify all participants and their involvement were not available.

Pricing WIPT. The Pricing WIPT was a part of the Alpha Contracting IPT. The Pricing WIPT conducted price negotiations with the contractor, and coordinated the negotiated workload hours and labor rate for the Corpus Christi Army Depot workload applicable to the PVS program scope.

Business IPT. The Business IPT was chaired by an employee of PEO. Membership included the Cost and Technical Evaluation WIPTs and various Army organizations. The Business IPT had oversight of the Cost WIPT and the Technical Evaluation WIPT. The Business IPT prepared the evaluation of Government and contractor costs, assessed funding limitations and financial impacts, prepared the Justification and Approval for Other Than Full and Open Competition, and prepared Circular A-76 waiver requirements.

Cost WIPT. The Cost WIPT was a part of the Business IPT. The Cost WIPT prepared PVS baseline, reviewed cost and performance of the contractor proposal and Government proposal, and performed the initial equalization of both proposals.

Technical Evaluation WIPT. The Technical Evaluation WIPT reviewed the contractor proposal and Government proposal for technical performance and issued two technical evaluation reports.

Engineering IPT. The Engineering IPT was chaired by an employee of AMCOM. Membership included personnel from AMCOM and PEO. The Engineering IPT evaluated the technical aspect of the PVS program, including airworthiness, configuration management systems, and flight safety.

Logistics IPT. The Logistics IPT was chaired by an employee of PEO and later AMCOM employees. The Logistics IPT assessed the doctrine impacts, logistics policy, and laws relating to and including depot maintenance and core logistics functions. The Logistics IPT also assessed use of contractor personnel on the battlefield, foreign military sales, management information systems, ownership of inventory including war reserves, ownership of test equipment, potential wartime conditions, and technical publications.

Under Secretary of the Army. The Under Secretary of the Army was the final Army decision authority for the PVS program. The Under Secretary of the Army was briefed on the results of AAA reviews of the PVS program including a review of the Circular A-76 waiver request.

AAA. The AAA, at the request of Under Secretary of the Army and other Assistant Secretaries, reviewed and equalized the contractor proposal and Government proposal after the Circular A-76 waiver request was submitted. Along with briefing the Under Secretary of the Army, AAA issued five consulting reports.

CEAC. Various CEAC employees supported the Cost WIPT. CEAC compiled and validated the PVS baseline, reviewed the Government proposal, participated in preparing the evaluation of Government and contractor costs and necessary adjustments to equalize the two proposals, and supported AAA in reviewing the waiver request package.

Army Office of General Counsel. The Army Office of General Counsel provided guidance on processing Circular A-76 waivers, evaluated proposed solutions to the Army Working Capital Fund issue, and attended several meetings throughout the Circular A-76 waiver process.

Office of the Assistant Secretary of the Army (Financial Management and Comptroller). The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) provided members to Business and Logistics IPTs and determined financial management impacts as well as recommended solutions. The Office of the Assistant Secretary also had special involvement in Army Working Capital Fund issues. They also tasked AAA to perform reviews of the Apache PVS program to ascertain the controls pertaining to Government property with contractors, the effect of the PVS model contract on the Army Working Capital Fund, and the cash flow projections.

Appendix H. Compendium of Laws, Regulations, and Instructions

Section 2462, title 10, United States Code. Section 2462, title 10, United States Code, (10 U.S.C. 2462), states that:

- (a) In General. Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service necessary for or beneficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or Government personnel) from a source in the private sector if such a source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, Executive order, or regulation) than the cost at which the Department can provide the same supply or service.
- (b) Realistic and Fair Cost Comparisons. For the purpose of determining whether to contract with a source in the private sector for the performance of a Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such a source with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense shall ensure that all costs considered (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are realistic and fair.

Office of Management and Budget Circular No. A-76. OMB Circular No. A-76, “Revised Supplemental Handbook, Performance of Commercial Activities,” March 1996 (revised through June 1999), establishes Federal policy for Government performance of commercial activities and sets forth procedures for studying those activities for potential contracting. Circular A-76 and its Supplemental Handbook provide guidance to Federal agencies on procedures for determining whether the work should be performed in-house or by another organization, including the private sector. The principal requirements of the Circular A-76 process for competitive cost comparisons include:

- developing a PWS,
- determining the Government’s most efficient organization,
- developing an in-house Government cost estimate for the most efficient organization,

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- issuing a request for proposals, evaluating proposals, and comparing the in-house estimate against the proposed contractor price to select the winner, and
 - considering any appeals.

The Circular A-76 Supplemental Handbook provides that agencies may waive cost comparisons and direct conversion to or from in-house performance when the conversion would result in a significant financial or service quality improvement, or the waiver will establish why the in-house proposal has no reasonable expectation of winning a competition under the cost comparison procedures of the Handbook. The Circular A-76 Supplemental Handbook also states that following a tentative waiver or Circular A-76 cost comparison decision, the Circular A-76 administrative appeals process is invoked. In addition, the Circular A-76 Supplemental Handbook encourages agencies to seek training on the policies and procedures of Circular A-76 and its Supplemental Handbook, and to ensure that the skills necessary for preparing the PWS, in-house management plan, and the cost estimate are available. Joint training for employees and their representatives is encouraged.

DoD Strategic and Competitive Sourcing Programs Interim Guidance. DoD Strategic and Competitive Sourcing Programs Interim Guidance dated April 3, 2000, includes interim guidance pending the update of DoD Directive 4100.15, “Commercial Activities Program,” March 1989, and DoD Instruction 4100.33, “Commercial Activities Program Procedures,” last updated in October 1995. The interim guidance requires:

- When performing a Circular A-76 cost comparison, DoD Components shall follow the procurement process required by the Federal Acquisition Regulation and as supplemented by the Defense Federal Acquisition Regulation Supplement and Component supplements.
- DoD Components and commanders/directors shall remain impartial during the cost comparison process and never intend or promote a specific outcome (in-house or contract) for the Circular A-76 cost comparison process.
- Where private sector consultants assist DoD Components in preparing both a PWS and management plan, sufficient “firewalls” within the private sector consultant should be in place to prevent the same individual from both developing the PWS and assisting in preparation of the most efficient organization.
- “Directly affected” civilian employees and their representatives, as well as individuals who participated in developing the Government’s Management Plan (for example, developing the most efficient organization or in-house cost estimate) shall be excluded from participating as members of the Source Selection Evaluation Board or as evaluators in the evaluation of competing contract offers unless an exception is authorized by the head of the contracting activity. Exceptions are authorized only in compelling circumstances. The

interim guidance defines directly affected civilian employees as a civilian employee (for example, DoD civilian, non-appropriated fund employee, or contractor) whose work is being competed. The exclusion is the result of a concern that a civilian employee's continued Federal employment may be affected by the outcome of the Circular A-76 cost comparison process.

Federal Acquisition Regulation. The Federal Acquisition Regulation addresses issues related to the conflicts of interest:

- The Federal Acquisition Regulation Part 3, "Improper Business Practices and Personal Conflicts of Interest," prescribes the policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.
- Federal Acquisition Regulation Subpart 3.101, "Standards of Conduct," states, "Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships."

DoD Instruction 5010.40. DoD Instruction 5010.40, "Management Control Program Procedures," August 28, 1996, includes by reference OMB Circular No. A-123 (Circular A-123), "Management Accountability and Control," June 21, 1995. Circular A-123 requires that agency managers shall incorporate basic management controls in the strategies, plans, guidance, and procedures that govern their programs and operations. Circular A-123 also requires that controls shall be consistent with standards, which are drawn in large part from the "Standards for Internal Control in the Federal Government," issued by the General Accounting Office, and that those standards include compliance with laws and regulations, separation of duties, and documentation.

Army Regulation 5-20. Army Regulation 5-20, "Commercial Activities Program," October 1, 1997, implements the requirements of Circular A-76. Army Regulation 5-20 provides policy for determining whether recurring commercial activities should be operated in-house or by outside entities. The regulation requires that:

- Commanders of major commands provide written guidance and on-site assistance to installation cost competition study efforts and provide training on the policies and procedures of the commercial activities program to ensure personnel have the necessary skills to meet the requirements of the regulation.
- Commanders of installations ensure that personnel are trained in policies and procedures of the commercial activities program to obtain the skills necessary to meet the requirements of the regulation.

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- When a waiver to allow conversion to or from in-house performance:

The waiver request must contain documentation that demonstrates that the various legal restrictions on converting DoD functions to contract (such as Section 8015 of the FY 97 DoD Appropriations Act and 10 U.S.C. 2461, 2462, and 2465) do not apply. (Approval of an “OMB Circular A-76 waiver” does not constitute a waiver of any law.)

- The in-house cost estimate shows the cost to the Government for performing the work in the PWS with the proposed in-house organization and that the proposed in-house organization is the most efficient organization.
- AAA, as the independent reviewer, review in-house cost estimates for activities with more than 65 civilians.

Army Regulation 11-18. Army Regulation 11-18, “The Cost and Economic Analysis Program,” January 31, 1995, establishes responsibilities and policy for the Army Cost and Economic Analysis Program. The regulation requires that:

- The Army Comptroller provide policy and oversight for activities of the CEAC.
- The Headquarters, Department of the Army principal officials will [among other functions] review cost and economic analyses or other cost comparisons to ensure completeness, suitability, and balance against Army program requirements and objectives.
- CEAC implement the Army Cost and Economic Analysis Program and review cost and economic analyses or other cost comparisons. The regulation also requires that the CEAC administer the Visibility and Management of Operating and Support Cost program process.
- The Army validate cost and economic analyses and other cost comparisons to ensure their currency, reasonableness, and completeness for use in decisionmaking.

Army Pamphlet 5-20. Army Pamphlet 5-20, “Commercial Activities Study Guide,” July 31, 1998, requires that AAA, as the independent reviewer of the Best Case Government Cost, certify the accuracy and reasonableness of the Best Case Government Cost and that the most efficient organization is a reasonable estimate of resources needed to perform the same quantity and quality of work required of the contractor in the PWS. Army Pamphlet 5-20 also requires that the independent review be completed before the deadline specified in the solicitation for receipt of contractor bids or initial proposal.

Army Cost Analysis Manual. The “Army Cost Analysis Manual,” July 1997, includes guidance for conducting cost analyses. The manual requires that:

- An independent organization or agency review and validate each cost estimate.
- The review include a thorough analysis of problem definition, alternatives, assumptions, costs estimated, benefit analysis (as necessary), risks, sensitivity analysis, conclusions, and recommendations.
- The documentation process provides readable, auditable, and useful reports.

Army Economic Analysis Manual. The “Army Economic Analysis Manual,” July 1995, includes guidance for conducting economic analyses. The manual requires that:

- An economic analysis be a systematic approach to identify, analyze, and compare costs or benefits of alternative courses of action that will achieve a given set of objectives, and that the approach is taken to determine the most efficient and effective manner to employ resources.
- All new or ongoing programs or activities are forwarded to higher headquarters for approval when a choice or trade-off between two or more alternatives is present.
- Economic analyses of high dollar value or high visibility (for example, projects that require approval by Headquarters, Department of the Army) have a thorough validation consisting of a comprehensive review of all costs and benefits, with a formally documented report at the conclusion of the review.
- Documentation of data sources and maintenance of an audit trail is because the acceptance of an economic analysis depends on the credibility of the cost estimates.

Appendix I. Army Audit Agency Role in the Apache Prime Vendor Support Review

The Defense Hotline allegation addressed the role of AAA in the Apache PVS program review. In response to taskings from the Under Secretary of the Army, Assistant Secretary of the Army (Acquisition, Logistics, and Technology) and the Assistant Secretary of the Army (Financial Management and Comptroller), AAA prepared five consulting reports. In addition to the consulting reports, AAA provided multiple briefings to the Under Secretary of the Army. The standards for conducting consulting assignments are not as stringent as the standards for performing audits and evaluations, especially when time limitations in gathering or presenting data exist. In consulting engagements, the client determines the nature and scope of the work to be performed. Government Auditing Standard 3.17 establishes external impairments such as external interference with the selection or application of audit procedures as being an impairment to auditor independence. As such, in consulting engagements where the client and not the auditor determines the nature and scope of the work to be performed the Government Auditing Standards independence requirements are not met.

Background. In a Circular A-76 proposal, the Government and the contractor prepare proposals based on a common PWS. In developing the Circular A-76 waiver package for the Apache support contract, the Technical Evaluation WIPT examined the support for the Government proposal (also called the Best Case Government Cost) and recommended adjustments to various cost elements in a technical evaluation report. The Army PEO, in preparing the Circular A-76 waiver package, made additional adjustments to make the Government proposal comparable with the contractor proposal. As discussed in finding A and finding B, additional guidance is needed for performing Circular A-76 waiver evaluations of Government and contractor costs.

Allegations. In general, the writer of the Defense Hotline allegation disagreed with AAA concurrence of the cost savings initiatives the Government proposal used to adjust the baseline. The specific allegations were:

- **Modernization Through Spares.** The allegation was that AAA inappropriately agreed with the proposed efficiency that reduced the cost of the Government proposal by \$14.5 million to recognize savings in spares modernization.
- **Life-Cycle Cost Reduction.** The allegation was that AAA inappropriately reduced the cost of the Government proposal by \$86.6 million to recognize life-cycle cost reduction savings.
- **Pipeline Inventory.** The allegation was that AAA improperly increased to \$180 million the \$110 million for pipeline inventory costs included by the Circular A-76 waiver analysis.

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- Contractor Field Support Representatives and Engineering Support. The allegation was that AAA inappropriately reduced the cost of the Government proposal by \$257.4 million (AAA later added an adjustment of \$51 million, making the reduction \$206.4 million).

Modernization Through Spares

The allegation was that AAA inappropriately agreed with the proposed efficiency that reduced the cost of the Government proposal by \$14.5 million to recognize savings in spares modernization. As AAA stated in Consulting Report No. 99-733, "Review of the Best Case Government Cost to Support the Apache," March 16, 1999, "this efficiency assumes that over time changes in technology will result in more efficient and cheaper parts. Although Aviation and Missile Command [AMCOM] couldn't support all the projected savings, we believe the concept has merit and the savings of \$14.5 million for the first 5 years are reasonable."

AAA recognized that the projected savings were not fully supported but believed that the concept had merit. CEAC also reviewed the savings and made an 80-percent reduction in the computed savings. Although the AAA report states that the concept had merit, the working papers disclosed some concerns about the concept of modernization through spares, including no track record for that type of proposal and no study to support the percentage reduction in the costs of spares. Given that the amount of savings represented a small percent (about 2 percent) of total spares purchased and reasonable chance for success, AAA decided to accept the proposed savings.

Life-Cycle Cost Reduction

The allegation was that AAA inappropriately reduced the cost of the Government proposal by \$86.6 million to recognize savings from life-cycle cost reduction. Life-cycle cost reduction savings are anticipated from projects that could reduce maintenance and repair costs for the Apache. Those projects often require up-front costs to develop and test new parts, processes, or procedures. The projects must recoup the costs before savings are recognized or achieved. In Consulting Report No. 99-729, "Review of the A-76 Waiver Package for Apache Prime Vendor Support," February 22, 1999, AAA concludes that the life-cycle cost reduction projects would not achieve the projected savings during the FY 1999 through FY 2003 time frame based on the FY 1998 technical evaluation report, which states that most of the projects did not contain rationale on how savings would be achieved. In the subsequent Consulting Report No. 99-733, AAA states that AMCOM provided better definitions of the projects and clarified that many of the projects were based on processes and procedures already used on other helicopters. Further, a review of the savings by a command engineer who had been involved in the initial technical review thought the savings were reasonable. Consulting Report No. 99-733 states,

“Because of this current information, we will accept most of the savings. But, we caution that previous reviews of similar cost reduction proposals have shown this type of savings are often optimistic and occur later than planned.”

AAA working papers disclose that AAA changed its position after reviewing seven projects and holding discussions with a member of the original Technical Evaluation WIPT. The engineer on the Technical Evaluation WIPT disclosed that subsequent to the technical evaluation report, the engineer reviewed the projects and projection of savings and stated that the support was “certainly better with more realistic savings.”

Because savings had been achieved in other helicopter programs and some savings had already been achieved on the Apache through value engineering projects, AAA concluded that AMCOM estimates of life-cycle cost reduction savings were conservative. An AAA auditor noted that further documentation and review to ensure that the savings that would occur would be needed. Miscommunication with the engineer on the Technical Evaluation WIPT was later brought to the attention of AAA in an e-mail sent by the Procurement Contracting Officer to an AAA official.

In a July 13, 1999, briefing to the Under Secretary of the Army, the issue was discussed, and AAA was tasked to have the Technical Evaluation WIPT review proposed savings from life-cycle cost reduction projects to determine the likelihood of achieving the savings. The second technical evaluation report confirmed that savings would occur, but not during the stated time frame. Therefore, AAA revised its position again and, as presented in a July 21, 1999, briefing to the Under Secretary of the Army, deleted \$84 million of the \$86.6 million adjustment previously reduced from the Government proposal in AAA Consulting Report No. 99-733.

Pipeline Inventory

The allegation was that AAA improperly increased to \$180 million the \$110 million for pipeline inventory costs included by the Circular A-76 waiver analysis. In Consulting Report No. 99-762, “Review of the Effect of Apache Prime Vendor Support Contract on the Army Working Capital Fund,” June 25, 1999, AAA stated:

During our review, the value of the pipeline was in the range of \$160 to \$200 million. For decision-making purposes, we suggest using the midpoint of about \$180 million. The pipeline represents obligations the working capital fund has for inventory on order. This amount changes from day to day as the fund makes disbursements and new purchases The range results from some items being questionable until further review.

AAA provided detailed information in the consulting report addressing the source and method they used to attempt to derive a validated number and indicated that more work was needed.

AAA working papers disclose that AAA performed as a facilitator, working with AMCOM and the Apache Project Office, in an attempt to reconcile their differences. First, AAA had to obtain agreement on the definition used for the pipeline inventory. Then an attempt was made to reconcile two different sources of information. AAA identified inaccuracies in both sources.

Consulting Report 99-762 attributes the \$40 million range to questionable items and states that AMCOM Integrated Materiel Management Center personnel need from 60 to 180 days to determine the validity of those items. The report states, "Until a complete scrub [of contract listings] is done, using the midpoint of the range—\$180 million—is a reasonable estimate for the decision-making process."

Contractor Field Support Representatives and Engineering Support

The allegation was that AAA inappropriately reduced the cost of the Government proposal by \$257.4 million (later changed to \$206.4 million). As AAA stated in a March 19, 1999, briefing to the Under Secretary of the Army, the Contractor Field Support Representatives and Engineering Support were not needed to meet the Apache requirements, thus \$257.4 million was deleted from the Government proposal adjustment. AAA later changed its position and added a \$51-million adjustment.

The AAA initial position was that the requirement was to support a given number of flying hours. We were informed by a CEAC employee that the "how to" provide or support the flying hours was left up to the Government and the contractor to decide; therefore, the \$257.4 million reduction. In Consulting Report No. 99-729, AAA states that either the proponent for the flying hour program or the Circular A-76 approval authority is in the best position to decide whether the adjustments are needed to satisfy the flying hour requirement. The Under Secretary of the Army directed the Deputy Chief of Staff (Operations and Plans) to describe the desired operational end state at 5 years for the Apache in terms of reliability and readiness. Based on that end state, AAA modified its position in a July 13, 1999, briefing and added \$51 million for 60 support representatives to the Government proposal.

AAA working papers and subsequent information provided disclose that AAA reduced the \$257.4-million adjustment because that adjustment was inaccurate, unsupported, and unreasonable. Specifically, both the contractor proposal and the Government proposal included two Contractor Field Support Representatives for each Apache unit designed to increase aircraft availability. Neither AMCOM nor the Apache Project Office could support their amounts. The \$257.4 million included post-production systems support, technical personnel, and miscellaneous costs; AAA could not isolate the Contractor Field Support Representatives costs. AMCOM used a very low figure that was not supported. AAA made calculations based on actual costs from Boeing, Lockheed Martin, and General Electric for the same type of Contractor Field Support Representatives services and arrived at \$51 million (\$170,000 a year multiplied

by 60 teams for 5 years). AAA deleted the \$257.4-million adjustment and included an adjustment of \$51 million for Contractor Field Support Representatives costs.

Conclusion

The review of the Circular A-76 waiver for the Apache PVS proposals was an iterative process. The lack of statutory or regulatory guidance for preparing a Circular A-76 waiver and for assessing the appropriateness of any adjustments caused multiple iterations. Further, as issues were raised in the management review process, additional work was performed by AAA and the Army and adjustments made. The AAA in most of their consulting reports adequately disclosed limitations on the data presented. For example, in Consulting Report 99-172, AAA indicated that time constraints precluded fully validating the pipeline inventory costs. We believe that some instances existed where AAA should have made additional disclosures so that decision makers would be aware of the assumptions and data limitations which were relied upon in making conclusions and recommendations. As shown, the AAA position on specific issues changed several times, which would add confusion to the decision making process. At other times, the support was limited and there were concerns expressed in the AAA working papers that should have been further disclosed to the decision makers. Nevertheless, the oversight process worked because as issues were raised, additional efforts were made to resolve them. Again, as stated in finding B, more guidance was needed regarding Circular A-76 cost comparison waivers to include a requirement for a common baseline, costs to be included in the cost comparison, a basis for determining whether costs are realistic and fair, and a requirement for an independent review of the Government cost and cost comparison.

Appendix J. Defense Hotline Complainant Comments on Draft Evaluation Report and Evaluation Response

The Defense Hotline complainant provided a series of comments on the draft evaluation report. The following summarizes those comments and our response to the comments.

Issue A: Army Working Capital Fund

Comment 1. The evaluation avoided the Army Working Capital Fund.

Evaluation Response. We examined a portion of the Army Working Capital Fund, specifically relating to the surcharge and pipeline valuation, as presented in the allegation and the Assistant Secretary of the Army (Financial Management and Comptroller) (Army Comptroller) review of alternatives to decapitalization. We evaluated whether the Army consistently favored sale of inventory in the Army Working Capital Fund without consideration of alternatives. Based on a review of documents collected during the evaluation, we concluded that the Army Comptroller was not convinced that the Apache PVS was a good business decision for the Army. In addition, the Army Comptroller wanted additional research done to ensure Army financial policies were considered and requested that the AAA perform consulting work on the effect the Apache PVS contract would have on the Army Working Capital Fund. On October 19, 1999, the Army Comptroller, the Under Secretary of the Army, Assistant Secretary of the Army (Acquisition Logistics and Technology) representative, and an Army Office of General Counsel representative met with the Principal Deputy Under Secretary of Defense (Acquisition and Technology) to obtain the Office of the Secretary of Defense position with respect to decapitalization from the Army Working Capital Fund and nonreimbursable transfer of the Apache parts inventory. The Principle Deputy would not permit the decapitalization from the Army Working Capital Fund but offered alternative approaches for the Army to consider as a way to move forward. We also reported the efforts the Army took to unsuccessfully decapitalize the Apache inventory in the Army Working Capital Fund, and alternatives considered to resolve the inventory issues.

Comment 2. The draft report statement that legal issues pertaining to the Army Working Capital Fund resulted in the cancellation of PVS Apache study is not accurate.

Evaluation Response. We agree that legal issues were not the only cause for the cancellation of the Apache PVS study. As discussed previously, substantive policy objections existed regarding providing the contractor the Apache inventory in the working capital fund. In addition to the October 19, 1999 memorandum previously discussed, the Army Office of General Counsel reviewed two proposals relating to the Apache inventory proposal and on March 23, 2000, wrote a memorandum to the Army Comptroller and the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) that

the inventory proposal had serious deficiencies. The Army Office of General Counsel concluded that in the absence of other [inventory] proposals, the Army should obtain statutory authority to decapitalize the Apache inventory as envisioned before the Army could provide the inventory to the PVS contractor as Government-furnished property. Also, on November 28, 2000, the Under Secretary of the Army stated in a memorandum to the Under Secretary of Defense (Acquisition, Technology, and Logistics) additional reasons for not pursuing the PVS, to include 3-year-old cost data and the Army legal counsel belief that the Army may need to undertake a Circular A-76 review.

Comment 3. The Inspector General of the Department of Defense did not investigate any allegation regarding decapitalization. The complainant believes that the PVS concept met the statutory requirements and that decapitalization should have been permitted.

Evaluation Response. We did not perform a detailed review of this issue because it was a management decision made in October 1999. See Evaluation Response to complainant comment 1. Further the Army Office of General Counsel stated that statutory authority would be needed to decapitalize the inventory as envisioned.

Two alternatives were presented to the Army Office of General Counsel. On March 23, 2000, the Office of General Counsel determined that both had serious deficiencies. The replacement-in-kind option was inconsistent with statutory requirements for working capital funds. The Office of General Counsel had no legal objection to a purchase alternative that would permit the contractor to purchase items from the Army Working Capital Fund at standard prices and to repair or replace unserviceable or excess items from Army units. The alternative had practical disincentives and to include the alternative would not provide as much of an incentive for the contractor to efficiently manage inventory, but would tie up operating funds, and the Army might be left with large amounts of unused inventory if the contractor were permitted to obtain parts from other sources. The Office of General Counsel recommended the Army pursue legislation to permit decapitalization, which would permit the contractor to receive the inventory as Government-furnished property.

Issue B: Army Audit Agency Review

Comment 1. The evaluation gave the AAA and the Auditor General a complete pass in the face of overwhelming documentation to the contrary.

Evaluation Response. The report addresses the results of our evaluation of the AAA role in the Apache PVS review in report Appendix I.

Comment 2. Why does the Inspector General of the Department of Defense believe that what the AAA conducted was not an independent review?

Evaluation Response. AAA provided consulting work for which the client determined the nature and scope of the work to be performed. Government Auditing Standard 3.17 establishes external impairments, such as external interference with the selection or application of audit procedures, as being an

impairment to auditor independence. As such, in consulting engagements where the client and not the auditor determines the nature and scope of the work, the Government Auditing Standards independence requirements are not met.

Circular A-76 requires that the Government cost estimate be certified in writing by the agency's Circular A-76 Independent Review Officer or designee, as being in full compliance with procedures and requirements described in the supplement to Circular A-76. According to personnel from the AAA Policy and Operations Management Directorate, the Installation Studies Division of the Installation Management Directorate is the independent reviewer for in-house cost comparison estimates. When any other directorate or division does an in-house Government estimate, that estimate is not an independent review envisioned in the Army and AAA regulations. Therefore, the AAA did not issue any written documentation that the AAA provided an independent review or written certification of the Government cost estimates.

Army Regulation 5-20 and AAA Circular 36-10, "Audit Guide for Reviewing Commercial Activity Cost Comparisons," assigns independent reviews of the Army's Circular A-76 proposals to the AAA. Army Regulation 5-20 and Army Pamphlet 5-20 require the AAA to be an independent reviewer and to review the in-house Government cost estimates for functions with more than 65 civilian full-time equivalents. The review must be completed before the proposal is submitted to the contracting official. According to AAA, the AAA Installation Studies Directorate performs the Army's Circular A-76 independent reviews. The directorate actually reviewed in February 2000 a draft of the PWS for the Apache, after the waiver request had been submitted to the Assistant Secretary of the Army. The review was, however, suspended when AAA was told that the PVS initiative had been suspended because of legal issues. The AAA independent review prior to submission of the Government cost estimate to the contracting officer did not occur. Also, according to AAA, because the Acquisition, Research, and Development Directorate and not the Installation Studies Directorate performed the AAA waiver review, the review did not constitute the independent review the Army and AAA regulations required. The AAA involvement occurred at a point in time different from the Circular A-76 required independent review.

Furthermore, AAA could not have performed the independent review function as the Government proposal was based upon budgetary estimates. The Government never prepared a management plan or developed a most efficient organization. AAA could not make a determination that the proposed most efficient organization and in-house cost estimate were adequate to perform the PWS because the Government proposal was not based on a most efficient organization and an in-house cost estimate, which was based on the staffing and other costs reflected in the most efficient organization and management plan. Consequently, AAA could not perform the type of independent review required for Circular A-76 cost comparisons.

Comment 3. Would the Department of Defense Inspector General have treated the AAA differently if we had determined it was an independent review in lieu of a consulting report?

Evaluation Response. We would have treated AAA differently if AAA performed an independent review or audit rather than consulting reviews. In an independent review or audit, AAA must follow the Government Auditing Standards and American Institute of Certified Public Accountants standards. In consulting services, AAA Regulation 36-68 allows AAA to follow selected sections of the Government Auditing Standards and American Institute of Certified Public Accountants standards. AAA reviews are subject to AAA Regulation 36-1, which is the Army's Management Control Process. Consulting services are not subject to AAA Regulation 36-1. In consulting engagements, the client determines the nature and scope of the engagement. In an independent review, the guidance requires the independent reviewer to determine the nature and scope of the engagement.

Comment 4. Did AAA have an obligation in their consulting services to present accurate and truthful information? Why did not the Department of Defense Inspector General review AAA actions?

Evaluation Response. AAA had an obligation to present accurate and truthful information, and we did review AAA actions. AAA Regulation 36-68 and the Government Auditing Standards require that the AAA obtain sufficient relevant data to afford a basis for its conclusions and recommendations; seek to accomplish the review [consulting] objectives established with the client; establish written or oral understanding about the responsibilities of AAA and its client about the nature, scope, and limitations of the review [consulting]; and communicate with the client. Our evaluation concluded that most of AAA consulting reports had adequate disclosure of the limitations on the data presented, but that additional disclosures should have been made to better inform decision makers.

Changes Made to Report in Response to Comments on Issue B. We added a statement clarifying that the AAA in most of its consulting reports did disclose limitations on the data presented, but additional disclosures should have been made to assist the decision makers. We also added a section to the report that explains more fully that the AAA did not perform an independent review of the Government cost estimate as defined in Army Regulation 5-20.

Issue C: General Accounting Office Decisions

Comment. The Department of Defense Inspector General ignored the General Accounting Office decisions on a number of directly pertinent issues.

Evaluation Response. The General Accounting Office and Comptroller General decisions were not ignored during the review. We reviewed decisions that dealt with most efficient organization and conflicts of interest. All of the decisions we reviewed were the result of protests made after Circular A-76 cost comparison determinations were made, or in response to a decision to cancel a solicitation. No General Accounting Office or Comptroller General decisions on Circular A-76 waivers came to our attention. However, the following are some of the more important decisions that came to our attention. While related, the decisions were not included in the draft report because the decisions were not needed to support the finding.

DSZ/Baker LLC; Morrison Knudsen Corporation, B-281224, January 12, 1999. The Comptroller General sustained the protest. The Comptroller General determined there was significant conflict of interest by the evaluators, and that the agency evaluation was invalid and did not furnish a proper basis for cancellation of the solicitation.

Aberdeen Technical Services, B-283727.2, February 22, 2000. The Comptroller General sustained the protest of Aberdeen Technical Services against the Department of the Army because the in-house estimate failed to include all costs for key personnel required in the solicitation, the agency improperly disallowed a price reduction, and the Army failed to determine whether the most efficient organization offered the same performance and quality levels proposed by the “best value” contractor.

Jones/Hill Joint Venture Costs, B-286194.3, March 27, 2001. The Comptroller General found that the Navy accepted without adequate analysis unsupported claims the team made regarding the ability of the Government’s most efficient organization to achieve the same level of performance and performance quality as the private-sector proposal.

Jones/Hill Joint Venture, Decision B-286194.4, B-28619.5, and B-286194.6, December 5, 2001. The protestor challenged the Navy’s Circular A-76 cost comparison study that concluded an in-house performance of base operations at a Navy base was more economical than contractor performance. The Comptroller General determined a conflict of interest existed because a Navy employee and a private sector consultant wrote and edited the PWS and then prepared the in-house management plan; the independent review certification that the Government could perform the functions as stated in the PWS, and the costs in the in-house estimate, were not supported; the personnel cost in the Government cost estimate did not include the cost of personnel outside the most efficient organization that would be used to accomplish the requirements in the PWS; and the Government’s most efficient organization was not adjusted to account for several strengths in the selected private sector proposal. The Comptroller General sustained the protest and recommended that the Navy issue a new PWS, prepare a new management plan with personnel not involved in drafting the PWS and certified with supporting documentation, solicit new proposals from the public, and perform a new cost comparison based on the new PWS.

Department of the Navy Reconsideration, B-286194.7, May 29, 2002. The Navy requested that the Comptroller General reconsider its decision in the Jones/Hill Joint Venture protest, B-286194.4, B-28619.5, and B-286194.6, in which the Comptroller General sustained the Jones/Hill Joint Venture protest challenging the Navy’s Circular A-76 review to perform base operations and

support services at a Navy base. The Comptroller General affirmed its decision but modified its recommendation to reflect only prospective application of the conflict of interest portion of the decision.

Issue D: Senior Official Allegations

Comment 1. Two senior officials named in the allegation were cleared by the Inspector General of the Department of Defense. Is it standard practice to just review the allegation and not follow up with the whistleblower at all?

Evaluation Response. The initial review by the Office of Departmental Inquiries, Office of the Inspector General, Department of Defense conducted of the allegations of the Army senior officials named in the Defense Hotline allegation disclosed no apparent violation of law or regulation.

Comment 2. The Audit section of the Department of Defense Inspector General did not review actions of the Army Comptroller in determining potential for conflicts of interest. Why did audit management not refer it back to Departmental Inquiries?

Evaluation Response. On December 16, 2002, additional information provided by the Defense Hotline complainant of potential conflicts of interests and bias by senior officials was provided to the Office of Departmental Inquiries for their review.

Issue E: Audit Versus Evaluation

Comment. Why was the report classified as an evaluation report instead of an audit report? Is there a difference between an audit report and evaluation report? Does an audit report require higher standards than an evaluation report? Is an evaluation report subject to outside peer review such as those recently performed of the Department of Defense Inspector General by the Department of Health and Human Services and Internal Revenue Service? Why were the objectives of the evaluation changed?

Evaluation Response. The decision to classify this report as an evaluation report is consistent with the long-standing practice of the Office of the Assistant Inspector General for Auditing for issuing evaluation reports on the results of reviews performed of the Service Audit Agencies, including the AAA. This review, in part, covers an evaluation of AAA actions.

Audits are performed in accordance with the Government Auditing Standards promulgated by the Comptroller General of the United States. Evaluations are performed in accordance with standards established in the Office of the Inspector General of the Department of Defense Assistant Inspector General for Auditing Handbook. The Handbook establishes the same guiding principles for planning, conducting, and reporting the results of evaluations as apply to audits. These principles include the requirement that all evaluation findings and conclusions be supported by sufficient, competent, and relevant evidence. An expectation exists that similar high standards should be applied to both audit and evaluation reports. Both audit and evaluation reports go through the same level

of quality control reviews before issuance, and both types of reports require that any scope limitations and Standards limitations be disclosed in the report. Government Auditing Standard 7.14 requires that the report disclose any significant constraints imposed on the audit approach by data limitations or scope impairments. That Government Auditing Standard is part of our standard for evaluations.

Outside peer reviews, such as those performed by the Treasury Inspector General for Tax Administration [Internal Revenue Service] in 2000 and the Department of Health and Human Services Inspector General in 2001 were performed in accordance with guidance contained in the President's Council on Integrity and Efficiency "Guide for Conducting External Quality Control Reviews of the Audit Operations of Offices of Inspector General." Peer reviews cover audits only and do not cover other types of reviews such as evaluations and investigations Offices of the Inspector General perform.

This review was first announced July 19, 2000. The announcement states that the objective was "to evaluate the allegations that the Army's assessment of an unsolicited proposal for the Apache Helicopter Prime Vendor Support Program was biased in favor of keeping Apache helicopter support in-house." The review was reannounced September 18, 2000, with a revised objective. The revised objective was "to evaluate the adequacy of management controls to preclude potential conflicts of interest and ensure the integrity and inclusiveness of data used for management decisions." The reannouncement also states that we would coordinate the review with the General Accounting Office and the Army Audit Agency. The announced objectives were revised because of new information obtained after the original announcement. The information included:

- Obtaining knowledge of the General Accounting Office involvement in auditing the Apache PVS program. The General Accounting Office issued a report in July 1999 without recommendations, stating that several analyses were in progress within the Army. The General Accounting Office representatives advised us that the FY 2001 Defense Authorization Act, when approved, would require that the General Accounting Office review the logistics support for the Apache helicopter. (The General Accounting Office subsequently issued Report No. GAO-01-630, "Defense Logistics: Information on Apache Helicopter Support and Readiness," July 17, 2001, in response to the requirement.) The General Accounting Office also advise us that they intended to follow up on the analyses in progress.
- A Director, Departmental Inquiries determination that no apparent violation of law or regulation by the Army Comptroller and previous commander of AMCOM was present.
- An in-progress Under Secretary of Defense (Acquisition, Technology, and Logistics) memorandum that directed the Army to continue the competitive process.

Because of the new information, a decision was made to focus the review on the adequacy of management controls to preclude potential conflicts of interest and ensure the integrity and inclusiveness of data used for management decisions.

Issue F: Circular A-76 Waiver Evaluation Biased

Comment. Why were the allegations that the Circular A-76 waiver evaluation was biased not addressed in the report?

Evaluation Response. We referred to the Office of Departmental Inquiries additional information provided by the Defense Hotline complainant of bias by senior officials. With respect to our evaluation, we could not prove that those employees involved disclosed or transferred contractor proprietary data to employees involved in preparing the Government proposal or incorporated such data into the Government proposal. We did note, however, that individuals had an opportunity to disclose or transfer data as a result of the multiple responsibilities assigned to three DoD employees. We also identified in the report whether the employees were “affected” employees or part of an organization that was affected if the Apache support was contracted out. The report recommends that policies that ensure segregation of duties for maintaining adequate management controls and avoiding the appearance of possible conflicts should be implemented.

Issue G: Adequacy of Circular A-76 Waiver Guidance

Comment. Why does the Department of Defense Inspector General believe that since the waiver was based on the Government having no realistic expectation of winning a formal A-76 competition, the cost comparison principles contained in the A-76 circular did not constitute adequate guidance?

Evaluation Response. Circular A-76 establishes policies for conducting cost comparisons that will determine whether commercial activities should be performed in-house or by the private sector. As discussed in the DoD interim guidance of April 3, 2000, a Circular A-76 waiver applies to the entire Circular A-76 cost comparison process. The Circular and the Army’s implementing guidance provide that a waiver for a cost comparison can be approved if the Service Assistant Secretary determines that a conversion of an in-house function to contract would result in significant financial or service quality improvement, or no reasonable expectation exists for the in-house winning competition under the Circular A-76 cost comparison process. Our report concludes that little statutory or regulatory guidance was present that pertains to Circular A-76 waivers at the time of the PVS program review, and recommends that the Deputy Under Secretary of Defense for Installations and Environment obtain additional guidance from the OMB regarding Circular A-76 waivers.

Issue H: Performance Work Statement

Comment 1. The Government required preparing a PWS. How can the Government be excused for not preparing an adequate proposal to the PWS?

Evaluation Response. The Government entered into negotiations with the contractor, concluded a PWS, and obtained contractor prices based on the PWS. The Government did not use the PWS for determining the Government's costs, nor did the Government prepare a most efficient organization. To expedite the process, the Government used the PVS baseline budget estimate. The Circular A-76 cost comparison process, which requires issuance of a PWS and Government and contractor proposals based on PWS requirements, is not applicable to waivers. No adequate guidance that pertained to Circular A-76 waivers existed, particularly with respect to a common requirements baseline. The report recommends that the Deputy Under Secretary of Defense for Installations and Environment obtain from OMB clarifying guidance that includes a requirement for a common requirements baseline for preparation and comparison of Government and contractor costs.

Comment 2. The Government proposal was based on a budget estimate, which was understated and benefited the Government.

Evaluation Response. The guidance from the General Officer Steering Committee to the PVS review IPT was to produce a specific level of savings with no additional investment of funds beyond the funding level in the then-current year Budget Estimate Submission and Program Objective Memorandum. Evaluating the budget estimate was outside the scope of our review. Funding priorities are an Army prerogative.

Comment 3. The statement in the draft report that the Army Deputy Chief of Staff (Operations and Plans) identified the need for additional services (engineering, etc.) is an incorrect statement. The need was already identified in the PVS contract and the PWS. If there were new requirements, they would have to be added to both proposals, therefore the draft report's conclusion is incorrect.

Evaluation Response. We agree that no new requirements existed. We revised the statement in the report that the Army Deputy Chief of Staff (Operations and Plans) identified the need for additional services. The Army Deputy Chief of Staff (Operations and Plans) confirmed, but did not identify, the need for additional services.

Comment 4. How was the Government able to take credit for savings initiatives it could not support?

Evaluation Response. Adjustments were made for savings initiatives. The oversight process worked to the extent that an effort was made to validate and equalize the proposals.

Comment 5. Once the performance scope was equalized, why was it not adequate for Circular A-76 waiver purposes?

Evaluation Response. The Army cited several reasons for not accepting the contractor proposal, including lack of currency for the 3-year-old cost data, questions on the impact of decapitalization of the Army Working Capital Fund, and the Army legal counsel belief that the Army may need to undertake a Circular A-76 review.

Issue I: Army Audit Agency Allegations

Comment 1. The \$14.5 million for modernization through spares exceeded the \$10 million threshold and thus, by itself, could have affected the decision. Also, the AAA did not have adequate support. Since the draft evaluation report included the AAA statements without comments, does the Inspector General of the Department of Defense agree with the AAA actions?

Evaluation Response. The \$10 million threshold does not apply to individual items, but to the total cost difference between the contractor and the Government proposal. Our evaluation objective was to evaluate the adequacy of management controls in place. The purpose of Appendix I is to present what AAA did in the Circular A-76 waiver review process. The report states the limitations cited by AAA in accepting the \$14.5 million. Our review of the AAA working papers disclosed some additional concerns by AAA that were not identified in the AAA consulting report. The AAA should have disclosed the additional concerns in their consulting reports.

Comment 2. On the pipeline inventory, the draft evaluation report included recitation of the AAA review of the matters without comment. Does the Inspector General of the Department of Defense agree with the AAA? The statement in the draft report that “a scrub of the data was not done” is untrue. The Procurement Contracting Officer provided the AAA with data to support the \$143 million and it was ignored by the AAA and the Inspector General of the Department of Defense. Why did the Inspector General of the Department of Defense condone this? The AAA had no support for the \$180 million used in the AAA consultant report.

Evaluation Response. We neither agree nor disagree with the AAA conclusions in Appendix I. We reiterated AAA conclusions on the pipeline inventory because their review was germane to the Defense Hotline allegation. We did not state that a scrub of the data was not done. The AAA attempted to scrub the data and concluded that a complete scrub would require 60 to 180 days to determine the validity of the items. In the interim, the AAA used the mid-point and made full disclosure of the action in their consulting report. The Procurement Contracting Officer provided data to the AAA and the Inspector General of the Department of Defense that showed the valuation of the pipeline as of September 1998 as \$110 million, with an additional \$33.9 million that was planned to be purchased but not yet on contract. Combined, the total inventory would have been \$143 million. However, the Defense Hotline allegation states, “the A-76 waiver included \$110 million for pipeline costs” and “the amount promised to the contractor for the pipeline was \$110 million” The \$110 million figure is the figure that was in question during conversations

with the Procurement Contracting Officer and the figure that was the basis of our review. The AAA working papers, based on discussion with the Procurement Contracting Officer, show the basis for the initial \$110 million figure. However, the AAA noted that the Procurement Contracting Officer did not include initial spare funds and Army Communications Electronics Command due-in inventory. Subsequently, an Army Working Capital Fund working group was established to reach a consensus on the value of the pipeline inventory.

Comment 3. The use of the term “miscommunication” in the report statement that during the AAA review of Life-Cycle Cost Reduction that there was miscommunication with the engineer on the Technical Evaluation WIPT is questionable. Does the Inspector General of the Department of Defense consider it good practice for AAA auditors with no technical expertise to reverse judgment of technical experts?

Evaluation Response. The term “miscommunication” was derived from an e-mail sent by the Procurement Contracting Officer to the AAA on July 12, 1999, and an e-mail between an engineer who was a member of the technical evaluation team and the Procurement Contracting Officer. The Procurement Contracting Officer was describing an apparent misunderstanding between the AAA auditor and the engineer. The Inspector General of the Department of Defense does not consider AAA auditors with no technical expertise reversing the judgment of technical experts a good practice. However, the AAA, as stated in the draft report, reviewed seven projects and held discussions with an engineer on the original Technical Evaluation WIPT prior to the action. When the second Technical Evaluation was performed, the AAA changed its position.

Comment 4. The report’s discussions of the AAA review of Contractor Field Support Representatives presented what happened and provided no comment on whether the AAA actions were adequate or appropriate. The complainant disagreed with the AAA proposition that numbers were unsupported and states that numbers were supported in element-by-element cost breakdown of negotiations. Why did the AAA make adjustment to the Government figures without a shred of detailed backup but want support for contractor numbers that have “greater fidelity and reliability?”

Evaluation Response. We neither agree nor disagree with the AAA inclusion or exclusion of Contractor Field Support Representatives and the related costs. The AAA repeatedly stated in briefings and consulting reports that the proponent of the flying hour program or the Circular A-76 approval authority is in the best position to decide if normalization adjustments were needed. When the operational end-state was presented, the AAA added \$51 million for Contractor Field Support Representatives to the Government cost estimate.

The Procurement Contractor Officer claim is that the \$257.4 million engineering support added to the Government cost estimate was fully supported. The AAA considered that the Procurement Contracting Officer adjustment to the Government cost was not adequate or supported. The AAA stated that the amount provided by the Procurement Contracting Officer included costs for postproduction support system, technical personnel, and other miscellaneous costs. AAA was not able to break out the amount for the Contractor Field Support Representatives. An AAA senior official stated that they reduced the

\$257.4 million figure because that amount was inaccurate, unsupported, and unreasonable.

The AAA and CEAC indicated that the waiver amount was reduced primarily because the waiver adjustments tried to force one Apache support approach to match another by comparing “how to” and not focusing on the “what” or desired output. The AAA and CEAC determined that the end product was flying hours and the how to would be left to individual offerors. Regarding acceptance of contractor numbers, the AAA did accept cost data from three contractors to derive the \$170,000 contractor support cost per Apache unit used to calculate the \$51 million added to the Government proposal.

Comment 5. Why does the Inspector General of the Department of Defense believe that the methodology and conclusions of the AAA do not represent evaluation bias? The draft report’s recitation of the AAA response is not an explanation of why there is not bias. The draft report mitigated the AAA conduct by stating that there was a lack of guidance.

Evaluation Response. The AAA was not tasked to perform an independent review of Circular A-76 cost elements. Specific cost elements for a Circular A-76 waiver are not defined. The AAA provided consulting reports to Assistant Secretaries of the Army and later, briefing charts, to the Under Secretary of the Army. In those reports and briefing charts, the AAA usually disclosed the limitations of its data and in some cases qualified its conclusions. The AAA repeatedly asked for guidance. For example, in its reports and briefing charts, the AAA states that the proponent of the flying hour program or the Circular A-76 approval authority should decide if the normalization adjustments were needed to satisfy the flying hour requirements. In Appendix I we state where the AAA should have provided more disclosure on the limitations and assumptions of its conclusions to the Under Secretary of the Army.

Comment 6. The AAA first briefing included budgeted numbers even though the AAA report stated that Program Objectives Memorandum promises were not being met and actual costs would be higher. The AAA knew this and ignored it.

Evaluation Response. The AAA did not ignore the Program Objectives Memorandum. The Program Objectives Memorandum and Program Objectives Memorandum efficiencies were discussed in various consulting reports and briefings. In the March 1999 consulting report, the AAA determined that the Government proposal could support the requirement of 120,000 flying hours “if funding is available and uninterrupted.” Army Operating Tempo funds would have to be provided directly to AMCOM, otherwise AMCOM could not implement the Government proposal concept within the current funding guidance. In a July 1999 briefing on Program Objectives Memorandum efficiencies, the AAA stated that 11 of 14 Program Objectives Memorandum efficiencies reviewed indicated that fewer savings could be achieved. Further, the AAA stated that it could not relate the savings from the efficiencies to the Apache. The AAA September 1999 briefings also addressed the Program Objectives Memorandum limitations.

Comment 7. The CEAC and AAA injected a questionable budget change into the decision process. Why did not this merit a investigation by the Inspector General of the Department of Defense?

Evaluation Response. Issues involving CEAC and AAA inclusion of data in the budget that produced a savings (reduced Apache flying cost) in the Government proposal were addressed in the report. For example, the report addressed issues relating to savings attributed to implementation of a single stock fund initiative, which combined wholesale and retail stock funds into a single stock fund

Changes Made to Report in Response to Comments on Issue I. We expanded our conclusion on AAA actions to state that most of the consulting reports and briefings AAA provided disclosed limitations on the data presented but that additional disclosures should have been made to the assist decision makers.

Issue J: Conflict of Interest Allegation

Comment. In the opinion of the Inspector General of the Department of Defense, ask legal counsel if it would be appropriate to allow a member of the Government team who participated in the evaluation of both proposals to act as an advocate for partly updating the Technical Evaluation.

Evaluation Response. As stated in the report, the actions were not appropriate for Employee A. We included a recommendation for segregating the duties.

Issue K: Safety Issues

Comment. Sustainment of system technical support funds has been programmed to provide engineering support to the system. As the amount of these funds put on the contract has decreased or even been eliminated, safety issues that impacted the helicopters and the soldier that fly them increased.

Evaluation Response. This was outside the scope of our review. Funding priorities are an Army prerogative.

Appendix K. Army Aviation and Missile Command Comments on Draft Evaluation Report and Evaluation Response

In addition to the official Army comments received from the Assistant Secretary of the Army (Acquisition, Logistics, and Technology), the Deputy to the Commanding General AMCOM submitted comments and the Chief, Internal Review and Audit Compliance AMC endorsed the comments. The complete text of the comments is in the Management Comments section of the report. The following summarizes the comments and our response to the comments.

Command Analysis Directorate

Comment 1. The Command Analysis Directorate disagreed with finding A and stated that the report conclusions that instances existed where inadvertent disclosure of contractor information could have occurred were not supported and did not occur.

Evaluation Response. Employee assignments identified in the report were not consistent with applicable Federal and DoD guidance as they related to conflicts of interest and separation of duties and, in our opinion, demonstrated opportunities where inadvertent disclosure of contractor information could have occurred. As stated in the finding, we did not note any actual instances of disclosure of contractor proprietary data to employees involved in preparing the Government proposal or incorporating such data into the Government proposal.

Comment 2. The Command Analysis Directorate disagreed with finding B and stated that the finding was an opinion-based judgment because one can do realistic and fair variable cost analysis. The CEAC and AAA reviews were independent. The Circular A-76 waiver request had no assurance of realism and fairness, but that did not occur for the reasons stated in the draft report. The lack of assurance of realism and fairness occurred because the Circular A-76 waiver was not coordinated and staffed with the Cost WIPT, the Business WIPT, and the OIPT before being submitted to the Army's senior leadership/decision authority with any accompanying comments acknowledging the existence of the significantly differing opinions about the cost comparison held by the members of the Cost WIPT. The draft report presentation of the AMCOM review implies that the Employee A review of the cost used in preparing the Circular A-76 waiver was construed by some as an independent review. The Employee A review was never advertised to meet a higher level requirement other than to objectively comment on the rationale and auditability of the Government proposal.

Evaluation Response. Part II of Circular A-76 provides generic and streamlined procedures for preparing Government cost estimates and cost comparison guidance for meeting the requirements of the Circular. Specific guidance did not exist for a Circular A-76 waiver.

As previously discussed, CEAC or AAA did not perform any independent reviews of the Government cost estimate. Circular A-76 and Army regulations require independent review of the Government cost estimates prior to submission to the contracting officer in Circular A-76 cost comparison reviews. According to Army regulations, AAA is the independent reviewer of Government cost estimates for the Army. CEAC was not tasked to review the Government cost estimate, but simply to review the Government cost estimate as part of the Business WIPT. AAA reviews occurred after the Circular A-76 waiver request had been submitted to the Army's decision makers. Also, AAA and CEAC told us during the evaluation that their reviews of the Government cost estimate did not constitute the independent review that Circular A-76 requires.

The Command Analysis Directorate agreed with our conclusion statement that "no assurance existed that costs used in preparing the Circular A-76 waiver request were realistic and fair." The directorate stated that the basis for the statement should be that the Project Manager/PEO did not effectively coordinate and staff the waiver before it was submitted. We did not include the Project Manager/PEO input in the draft report because we did not have documentation to determine if staffing and coordination was or was not done before the waiver submission.

The report states that the Employee A review did not constitute an independent review. We did not infer or imply that the Employee A review was advertised as an independent review.

Acquisition Center

Comments. The comments generally state that the draft report: attributes improper actions to lack of guidance when, in fact, failure was the result of not following existing guidance; did not address the direction, advice, oversight higher-level headquarters personnel and AAA provided in the conduct of the Circular A-76 review; states that no independent reviews were performed, yet AAA and CEAC were involved in the process; states that the Government did not propose to the PWS when Circular A-76 requires equal statements of work; and did not address the specific allegations of the impact or validity of decapitalization of the Apache inventory from the Army Working Capital Fund and the actions of AAA.

Evaluation Response. As previously discussed, the Circular A-76 cost comparison process is not applicable to Circular A-76 waivers. While it provides guidance on the cost comparison process that would be subject to the Administrative Appeals Process, Circular A-76 does not provide adequate guidance for processing and comparison of costs for Circular A-76 waivers.

The report did not address the oversight the Acquisition Center or headquarters personnel provided on the PVS process. Where specific allegations were raised regarding high-level personnel, that review was primarily handled by the Office of Departmental Inquiries, Office of the Inspector General, Department of Defense. The Office of Departmental Inquiries review of the allegations of the Army senior officials named in the Defense Hotline allegation disclosed no apparent violation of law or regulation. On December 16, 2002, additional information provided by the Defense Hotline complainant of potential conflicts of interests and bias by senior officials was provided to the Office of Departmental Inquiries for their review. The report addresses in Appendix I the role of AAA.

The AAA did not perform an independent review as defined by Army Regulation 5-20 and AAA Circular 36-10. AAA provided consulting services and the AAA standards for performing consulting reviews are discussed in Appendix I.

During our evaluation, CEAC informed us through interviews and e-mails that it reviewed the PVS cost baseline and the Government cost estimate as a member of the Cost WIPT under the Business IPT. As such, the CEAC review did not constitute the independent review of the Government cost estimate required by Circular A-76.

The Government prepared a PWS with which the contractor had to abide. The Government did not use the PWS. To expedite the process, the PEO provided in November 1997 the Government PVS baseline to AMCOM to prepare the Government proposal. The Government used the PVS baseline budget estimate as a starting point. Because the adjusted PVS baseline was used rather than the PWS to prepare the Government proposal, the contractor and Government proposals were not comparable. The Circular A-76 cost comparison process is

not applicable to waivers. The report recommends that clarifying guidance addressing Circular A-76 waivers be obtained from OMB.

The scope of the evaluation was to evaluate management controls to preclude potential conflicts of interest, and ensure the integrity and inclusiveness of data used for management decisions. As previously discussed, although the scope was limited, we examined a portion of the Army Working Capital Fund specifically relating to the surcharge and pipeline valuation, as presented in the allegation and the Army Comptroller's review of alternatives to decapitalization. We also reported the efforts that the Army took to unsuccessfully resolve issues regarding the Apache inventory in the Army Working Capital Fund. We addressed the role of AAA in Appendix I.

Appendix L. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Deputy Under Secretary of Defense (Acquisition Initiatives)
Deputy Under Secretary of Defense for Installations and Environment
Under Secretary of Defense (Comptroller)/Chief Financial Officer
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)

Joint Staff

Director, Joint Staff

Department of the Army

Secretary of the Army
Under Secretary of the Army
Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
Program Executive Officer, Aviation
Assistant Secretary of the Army (Financial Management and Comptroller)
Director, Army Cost and Economic Analysis Center
Assistant Secretary of the Army (Installations and Environment)
Commanding General, Army Materiel Command
Commanding General, Army Aviation and Missile Command
Assistant Chief of Staff for Installation Management
Deputy Chief of Staff (Logistics)
Auditor General, Department of the Army

Department of the Navy

Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Other Defense Organization

Director, Defense Logistics Agency

Non-Defense Federal Organizations

Office of Management and Budget
General Accounting Office

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Finance
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform
House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform
House Subcommittee on Technology and Procurement Policy, Committee on Government Reform

Deputy Under Secretary of Defense for Installations and Environment Comments

Final Report
Reference



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

October 7, 2002

MEMORANDUM FOR DOD(IG)AUD

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS *12/10/02*

SUBJECT: Draft Audit Report Management Controls Over Proposed Prime Vendor Support for the Army Apache Helicopter (Project No. D2000LH-0252)

This memorandum responds to your request for comments on the draft report. We have reviewed the subject audit report and concur if the following changes are reflected in order to present an accurate report and to avoid relaying erroneous procedures in the report. We are providing our comments in two sections: (1) "General Comments" and (2) "Specific Comments." General Comments corrects terminology to ensure consistency with OMB Circular A-76 but the specific page, paragraph, or line numbers are not identified. Specific Comments proposes changes to and rationale for specific recommendations in the subject report.

a. **General Comments.** Part I, Chapter 1, Paragraph E, of the Revised Supplemental Handbook (RSH) to OMB Circular A-76 provides policy for Agency Cost Comparison Waivers and does not use the terms "government proposal" or "cost comparison." The use of "proposal" and "cost comparison" are misleading terms as explained below.

1. **Recommended Change:** Change all references from "Government proposal" to either "PVS baseline" or "government performance." **Rationale:** The term "government proposal" is not a term used in the RSH and misleads the reader by implying that the government responded to a formal solicitation as required by the FAR. When a formal cost comparison is performed, the RSH uses the term "in-house offer." The report specifically states that the PVS baseline (with adjustments) was used for evaluation against the contractor's proposal. The report should avoid the use of either "proposal" or "offer" in order to accurately portray that no formal government proposal or offer was submitted in response to a solicitation.

2. **Recommended Change:** Change all references from "cost comparison" to either "evaluation of government and contractor costs" or "the cost of government performance compared to the cost of contract performance." **Rationale:** The term "cost comparison" is a term used in the RSH to represent a specific public-private competition process that is outlined in Part I, Chapter 3, of the RSH. While the RSH does not require this formal cost comparison process in order to justify a cost comparison waiver, an evaluation method is necessary to compare the cost of government performance with the cost of contract performance based on the same baseline requirements in order to justify and approve a cost comparison waiver. The Army did not use the formal cost comparison process as implied when the report uses the term "cost comparison." The report should avoid the use of the term "cost comparison" otherwise it implies that a formal cost comparison was performed by the Army.

b. **Specific Comments on Recommendations.**



Clarifying
footnote
added

Revised to
suggested
terminology

Page 17

1. **Reference Recommendation Paragraph A.1. (page 15):** The report recommends: "... the Deputy Under Secretary of Defense for Installations and Environment develop guidance that addresses actual and apparent conflicts of interest and segregation of duties for Circular A-76 waiver cost comparisons including a requirement for appropriate training." We concur with this recommendation.

Page 17

2. **Reference Recommendation Paragraph A.2.a. (page 16):** The report recommends: "Limiting membership of 'directly affected' persons in the working groups."

Revised

Recommended Change: "Not permitting 'directly affected' individuals to participate as members of or advisors to any working group that has access to contractor offers, except when exempted by the Head of Contracting Activity in accordance with ethics and standards of conduct rules and procurement restrictions in 41 U.S.C. 423 and FAR 3.104." **Rationale:** Limiting membership of "directly affected" persons in working groups is unnecessarily restrictive and inaccurate. Based on the functional expertise and working knowledge of directly affected persons, their participation on a variety of working groups is essential and often necessary when performing either the formal cost comparison process or a determination to waive a cost comparison. Consistent with procurement integrity, ethics and standards of conduct rules, directly affected persons are permitted to participate on a group that develops either (a) the in-house offer including the government cost estimate or (b) the performance work statement. Directly affected persons are not permitted to participate on any working group that has access to contractor offers. The report is correct when it identifies that directly affected persons with knowledge of the contractor's cost proposal should not have been involved in developing the cost of government performance.

Page 26

c. **Reference Recommendations Paragraph B.1. (page 23):** The report recommends: DUSD(I&E) develop guidance regarding OMB Circular A-76 cost comparison waivers that include the following:

- A requirement for a common requirements baseline for preparation and comparison of Government and contractor costs.
- Identification of the costs included in the cost comparison.
- The basis for determining whether costs are realistic and fair.
- A requirement for an independent review of the Government cost and cost comparison.

Recommended Changes:

DUSD(I&E) propose to OMB during the revision to OMB Circular A-76 to clarify procedures for cost comparison waivers that include the following: **Rationale:** We concur that more definitive guidance is needed and we will work with OMB to recommend clarification of the OMB waiver policy. Since OMB is currently revising OMB Circular A-76 in order to incorporate recommendations made in the Commercial Activities Panel Report and publication of the draft in the Federal Register is expected by the end of October, it would be inappropriate for OSD to issue clarifying guidance at this time

a. Require the use of a common requirements baseline to determine if a cost comparison waiver is justified. **Rationale:** The change avoids the implication that a "cost comparison" is performed.


b. Require the use of fully allocated costs (in accordance with Part II of the RSH and the DoD A-76 Costing Manual) to determine the cost of in-house performance in evaluation against the cost of contract performance for cost comparison waivers. **Rationale:** The change requires the use of specific costing practices required by the RSH in order to reflect fully allocated costs that are not in an agency's budgeted costs. Predetermining the exact costs to be included in waiver justifications would be specific to each waiver. Part II of the RSH and the DoD A-76 Costing Manual sufficiently identify how costs are calculated.

Revised

c. State how the government determines the basis for determining whether private sector costs are realistic and fair when the basis for the cost comparison waiver will be based upon a significant financial improvement. **Rationale:** The change requires the government to state the basis for determining whether private sector costs are realistic and fair if the basis for the cost comparison waiver is based upon a significant financial improvement. (NOTE: The presumption in the RSH is that a contracting officer makes such realistic and fair determinations in accordance with the FAR. If this is the case, the OMB waiver guidance needs to include the specific FAR cite.)

d. Require an independent review of the cost comparison waiver analysis prior to approval. **Rationale:** The change requires an independent review of the cost comparison waiver analysis prior to approval. There current wording suggests a formal cost comparison is performed when this may not be the case. Since cost comparison waivers are always controversial and subject to the Administrative Appeal Process, an independent review is an excellent recommendation.

Point of contact for subject audit report is Mrs. Annie L. Andrews, ODUSD(I&E)CS&P, (703) 602-2608.



Joseph K. Sikes
Director, Competitive Sourcing
and Privatization

Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

26 August 2002



SAAL-SA

MEMORANDUM FOR DEPARTMENT OF DEFENSE (INSPECTOR GENERAL)

SUBJECT: Draft Report on Management Controls Over Proposed Prime Vendor Support (PVS) for the Army Apache Helicopter (Project No. D2000LH-0252)

On behalf of The Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) comments are provided (see enclosure) for the subject draft report pertaining to Apache PVS as follows: (1) Concurs with all DODIG findings and conclusion; (2) Concurs with two recommendations as written; and (3) Submits three new minor recommendations.

Point of Contact is LTC Mike Cavalier, (703) 604-7057 or email: michael.cavalier@saalt.army.mil.

WILLIAM L. BOND
Major General, GS
Deputy for Systems Management

ENCLOSURE: A/S

SUBJECT: Comments on DOD IG Draft Report on Apache Prime Vendor Support

1. Reference Recommendation A.2 (page 16) of the draft DOD IG report begins "A.2. Recommendation that the Assistant Secretary of the Army (Acquisition Logistics, and Technology) update Army Regulation 5-20, Commercial Activities Program, to require" New Recommendation (#1): Change "Assistant Secretary of the Army (Acquisition Logistics, and Technology)" to "Army Assistant Chief of Staff for Installation Management." Reason: The proponent for Army Regulation 5-20 is the ACSIM, not the ASA(ALT).

Redirected
Page 17

2. Reference Recommendation A.2.a (page 16), the report recommends, "Limiting membership of 'directly affected' persons in the working groups." New Recommendation (#2): Change to read, "Ensuring that 'directly affected' persons do not assist and are not members of any working group that has access to the contractor proposal, except when exempted by the Head of Contracting Activity in accordance with ethics and standards of conduct rules and procurement restrictions in 41 USC 423 and FAR 3.104." Rationale: 'Directly affected' persons need to participate in developing the Government proposal. As subject matter experts, they know best what the functions the Government performs, and their participation in developing the Government proposal need not be limited. The potential conflicts of interest identified in the report occurred when persons with access to the contractor proposal also participated in developing the Government proposal, and this should be strictly limited.

Redirected
Page 17

3. Concur with Recommendation B1 (page 23).

Page 26

4. Reference Recommendation B2 (page 23), change "Assistant Secretary of the Army (Acquisition Logistics, and Technology)" to "Army Assistant Chief of Staff for Installation Management." Reason: The proponent for Army Regulation 5-20 is the ACSIM, not the ASA(ALT). Concur with recommendation B2 to update AR 5-20 "Commercial Activities Program."

Redirected
Page 26

5. Reference Appendix I (pages 44-46) – Concur with all DODIG findings.

Pages 47-51

6. Reference Appendix I (page 47) – Concur with conclusion.

Page 51

7. In Appendix J (Report Distribution), New Recommendation (#3) - please add the following officials under Department of the Army:

Appendix L

Assistant Secretary of the Army (Installations and Environment)
Assistant Chief of Staff for Installation Management

Army Aviation and Missile Command Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333 - 0001

AMCIR-A (36-2a)

28 AUG 2002

MEMORANDUM FOR MR. DONALD C. CRESS, PROGRAM DIRECTOR, STRATEGIC
ENGAGEMENT OFFICE, U.S. ARMY AUDIT AGENCY, 3101 PARK CENTER DRIVE,
ALEXANDRIA VA 22302-1596

SUBJECT: DODIG Draft Report, Management Controls Over Proposed Prime Vendor Support
for the Army Apache Helicopter, Project D2002LH-0252 (AMC No. D0039)

1. Reference AR 36-2, 26 Apr 91, Audit Reports and Followup.
2. We have enclosed unsolicited comments from the U.S. Army Aviation and Missile Command (AMCOM) for your review. The U.S. Army Materiel Command agrees with AMCOM's position.
3. Point of Contact for this audit is Ms. Jennifer R. Baxter, 617-9025, e-mail – baxterj@hqamc.army.mil.

FOR THE COMMANDER:

Encl
as


ARCHIE B. FORD
Chief, Internal Review and
Audit Compliance Office



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
REDSTONE ARSENAL, ALABAMA 35898-5000

AMSAM-IR (36-2b)

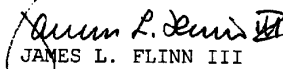
15 AUG 2002

MEMORANDUM FOR Internal Review and Audit Compliance Office
(AMCIR-A), U.S. Army Materiel Command, 5001 Eisenhower Avenue,
Alexandria, VA 22333-0001

SUBJECT: DODIG Draft Report, Management Controls Over
Proposed Prime Vendor Support for the Army Apache Helicopter,
Project D2000LH-0252, (AMC Project No. D0039), (AMCOM Project
No. 03-0700-038)

1. Enclosed are AMCOM comments to the subject draft report.
3. The point of contact is Mr. Keith Jones, AMSAM-IR,
commercial 256-313-1785 or DSN 897-1785, email at
keith.jones@redstone.army.mil.

Encl


JAMES L. FLINN III
Deputy to the Commanding General

AN EQUAL OPPORTUNITY EMPLOYER

Command Comments
DODIG Draft Report
"Management Controls Over Proposed Prime Vendor
Support for the Army Apache Helicopter"
(DODIG Project No. D2000LH-0252)
(AMC Project No. D0039)
(AMCOM Project No. 03-0700-038)

Command Analysis Directorate:

- 1) Finding A. Non-concur. Reference Finding A paragraph, page 8. The assertion sentence, "... we identified instances ...", is not clearly linked to information presented in the report to justify the judgmental assertion. Furthermore, we don't agree that any instances existed because the sequencing of the events was known to preclude any relevant disclosure. The asserted statement, "... inconsistent with Part 3 ...", is not proven by information in the report. Therefore, the opinion reflected in the last sentence of the finding A paragraph is not supportable/justified.
- 2) Recommendation to Finding A. No comment.
- 3) Finding B. Non-concur. Reference last sentence of finding B paragraph (page 17) and first sentence of conclusion paragraph (page 22). The statements made are opinion-based judgment, and you can do realistic and fair variable performance/effectiveness - variable cost analysis. CEAC was and is independent (as was AAA who became involved after the Circular A-76 waiver was prepared by the PEO), and no more independent agencies are required. Although, if the sentence is interpreted literally, we do agree that the PM/PEO prepared Circular A-76 waiver request had no assurance of realism and fairness. This was because it was not coordinated and staffed with the Cost WIPT, the Business WIPT, and/or the OIPT before being submitted; nor did it go forward to the Army's senior leadership/decision-authority with any accompanying comments acknowledging the existence of the significantly differing opinions about the cost comparison held by the members of the cost WIPT.

4) Recommendation to Finding B. No comment.

5) Comment to the implication presented on page 20, AMCOM Review paragraph, first and last sentences regarding "... was not an independent review.". Employee A's review was never advertised to meet some higher level requirement other than to objectively comment on the presence of documented rationale and auditability of the government proposal.

Acquisition Center:

- 1) The DODIG report states that there was not proper guidance, despite the fact that it is quite clearly defined in the OMB Circular A-76 regulation. The report disregarded that there was distinct legal guidance and instruction on how participants of this action were to exercise their responsibilities, and that evaluators were required to sign statements, which unmistakably delineated their responsibilities. These statements also presented, in an unambiguous fashion, what constituted a conflict of interest, which, in and of itself, would indicate written guidance, acceptance, recognition, and signed statements of understanding by each individual participating in the process. The DODIG attributed improper action to a lack of guidance when, in fact, the action resulted from a failure to comply with the guidance which was in effect.
- 2) The DODIG did not address the direction, advice, oversight provided by higher-level headquarters or AAA in the conduct of this A-76 action.
- 3) The DODIG report indicates that an independent review, which was a requirement of A-76, was not performed despite the fact that AAA and CEAC were involved as independent reviewers. Specifically, the DODIG state that AAA or CEAC were not involved in this process although they received awards from the Assistant Secretary of Army (Financial Management) for their part in reviewing this very action.
- 4) The DODIG report finds that the government did not propose to the Performance Work Statements. A-76 rules clearly require equal statements of work for

government and contractor along with a review by an independent party. The DODIG did not acknowledge that this basic process of A-76 was followed or if it was not followed.

5) The initial complaint to the DODIG went through the chain of command. This report does not address those allegations. Therefore, there is no closure for the Army on those allegations. Specifically, this report does not address the following:

- Impact or validity of the decaptialization decision of the Army Working Capital Fund upon whether or not a contract would be awarded to TAS (Team Apache Systems, a Joint Venture between Lockheed-Boeing).
- Actions by AAA on the price analysis, which were allegedly contrary to the A-76 requirements (e.g guidance noted in paragraph 1 which was not followed).
- Discrepancy of the statutory basis of the recovery of the AWCF for the proposed PVS contract.

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